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William F. Reeves	271	296	317	323
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George W. Burpee	325	331		
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Otis E. Hovey	417	420		
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William F. Harden	431	434		
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Frank D. Allen	442	451		
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Frank B. McCord	508	511	513	513
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George Keegan	666	689	692	694
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Amos Schaeffer	764	778	781	782
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Robert Huntley	834	855	929	943
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George H. Pegram	994	998	1007	

Witnesses on behalf of the City of New York:

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John C. Brackenridge	458	462		
	466	471	498	502
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John S. Bruce	626	627		
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Exhibits of the City of New York:

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Affidavit of S. Wolfenden, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Herald on Sept. 17 & 20, 1923 (Ex. 2)	235	1083
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Affidavit of Chas. W. Jaros, ver. Sept. 20, 1923, showing publication of Governor's order appointing Extraordinary Term of Supreme Court in N. Y. Times on Sept. 17 & 20, 1923 (Ex. 5)	236	1086
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Resolution of Board of Estimate and Apportionment adopted Dec. 5, 1919 authorizing President of Borough of Manhattan to take up negotiations with Manhattan Railway Co. for removal of tracks, etc., constituting the spur (Ex. 9)	237	1087
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Resolution of Board of Estimate and Apportionment adopted Jan'y 14, 1921, requesting Public Service Commission to institute proceeding and conduct hearing to determine matters specified in Chap. 788, Laws of 1917, as amended by Chap. 611, Laws of 1919 (Ex. 11)	238	1094
Order and determination of Public Service Commission, dated Apr. 22, 1921 —Case No. 2582 (Ex. 12)	238	1096

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Notice of application of City for order to condemn (Ex. 16)	240	94 1109
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Affidavit of J. Osgood Nichols submitted in opposition to petition of City (Ex. 16)	240	1110
Reply affidavit of Albert T. Swords submitted on behalf of City (Ex. 16)	240	1117
Affidavit of Viertel, of McCormick and of Murty as to publication of notice of application of City for order to condemn in City Record and as to posting same (Ex. 16)	240	123 124 1119
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Draft Damage Map filed in N. Y. Co. Clerks office on July 19, 1923 (Ex. 19)	241	1120 1888 141
Notice of Trial (Ex. 20)	241	1120

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Detailed statement showing cost to reproduce and depreciated value as of Nov. 1, 1923 of 42nd St. Elevated Spur from Park to 3rd Aves., prepared by Jno. C. Brackenridge (Ex. 22)	468	1121
Estimated cost to reproduce as of Nov. 1, 1923, stairway and canopy for same at Park Ave. and 42nd St., prepared by Jno. C. Brackenridge (Ex. 23)	469	1125
Report of Ticket Sales for 1918 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 24)	577	1126
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Report of Ticket Sales for January, February, March, and April, 1924, of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 30)	577	1126
Annual Report for 1919 of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 31)	578	1126
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June monthly reports for the years 1919 to 1923, inc. of Interborough Rapid Transit Co. filed with Transit Commission (Ex. 36)	578	1126
Count of passengers using 42nd St. shuttle at 42nd St., and Park Ave., Nov. 20th and 21st, 1923 (Ex. 37)	580	1129
Tabulation showing results of card canvas of passengers using shuttle trains on 42nd St. Spur of 3rd Ave. Elevated Line, Nov. 21, 1923 (Ex. 38)..	582	1130
Statement showing ticket sales and actual count of tickets deposited in cancelling box at Grand Central Station, 3rd Ave. Line, from Apr. 1 to Apr. 7, 1921, made by Jno. S. Bruce (Ex. 39)	582	1132
Tabulation showing revenues assignable to 42nd St. Elevated Spur for fiscal years (1919 to 1923) ended June 30, prepared by Jno. Bauer (Ex. 40 for Ident.; Ex. 40)	598 603	1133
Letter, dated Jan'y 7th, 1924, from J. L. Quackenbush, General Counsel of Interborough Rapid Transit Co. to L. H. LaMotte, containing certain data (Ex. 41)	601	1134
Tabulation showing operating expenses and taxes chargeable against 42nd St. Elevated Spur for each of fiscal		

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years (1919 to 1923) ended June 30th, prepared by Jno. Bauer (Ex. 42 for Ident.; Ex. 42)	603 606	1137
Tabulation showing ticket sales at designated Elevated and Subway stations at 42nd St. from 1900 to 1923, prepared by Jno. Bauer (Ex. 43 for Ident.; Ex. 43)	609 616	1138
Resolution of Board of Estimate and Apportionment adopted Nov. 23, 1923, vesting title herein (Ex. 44)	623	89 1139
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Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co. dated Mar. 15, 1913 (Ex. 45A)	624	1181
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., dated Oct. 22, 1913 (Ex. 45B)	624	1190
Supplementary agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., dated Feb'y 17, 1916 (Ex. 45C)	624	1196
Sixteen (16) Photographs showing north and south sides of 42nd St. between Park and 3rd Aves. including structures and abutting properties (Exs. 46A to 46P)	626	1204 1884 1892
Order and determination of Transit Commission in Case No. 2704 (Ex. 47)	627	1204
Certificate of Transit Commission in Case No. 2704, pursuant to Sec. 53, Public Service Commission Law (Ex. 48)	627	1210

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Statement showing ticket sales at 6th Ave. and 42nd St. Elevated for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr. 1924, prepared by Jno. Bauer (Ex. 51)	704	1216
Statement showing ticket sales for 23rd St. Station on 3rd Ave. Elevated Line for years 1922 and 1923, and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 52).....	704	1217
Statement showing ticket sales for 42nd St. Station on 2nd Ave. Elevated Line for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 53)	704	1218
Statement showing ticket sales for 34th St. Station on 3rd Ave. Elevated Line for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 54)	704	1219
Statement showing subway ticket sales for Grand Central Subway Station at 42nd St. for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 55) ..	704	1220
Statement showing ticket sales for Times Square Subway Station at 42nd St. for years 1922 and 1923 and Jan'y, Feb'y, Mar. and Apr., 1924, prepared by Jno. Bauer (Ex. 56)	705	1220
Statement showing monthly ticket sales at Grand Central Station of Elevated		

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Chart showing monthly ticket sales or turnstile entries at Grand Central Station of Elevated divisions of I. R. T. Co., registered July, 1919, to demolition, prepared by Jno. Bauer (Ex. 58)	755	1221 1894
Certificate of Transit Commission in Case No. 2704, pursuant to Chap. 635, Laws of 1923 (Ex. 59)	782	1222
Tabulated statement prepared by Jno. C. Brackenridge showing schedule of operation, estimated earnings and expenses—value of 42nd St. Elevated Spur as railroad in operation as part of entire Manhattan Elevated system (Ex. 60)	789	1228
Detailed estimated cost of changes required at 42nd St. and 3rd Ave. by removal of spur made by Jno. C. Brackenridge (Ex. 61A)	1035	1230
Statement prepared by Jno. Bauer showing compilation of monthly ticket sales of 3rd Ave. Elevated at Grand Central and 42nd St. and 3rd Ave., years 1922, 1923 and Jan'y, Feb'y, Mar. and Apr., 1924 (Ex. 62 for Ident.; Ex. 62)	1042 1043	1235
Statement prepared by Jno. Bauer showing comparison of I. R. T. elevated ticket sales, 3rd Ave. Line at 42nd St. and at 34th St. for years 1923 and 1924 (Ex. 63 for Ident.; Ex. 63)	1043	1236
Statement prepared by Jno. Bauer showing tabulation of ticket sales, 3rd Ave. Line at 42nd St., Grand Central		

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Photograph of station of 3rd Ave. Elevated Road at 42nd St. looking east from a point west after station improvements had been made (Ex. 67)	1065	1238 1884 1898
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Exhibits of Interborough Rapid Transit Company:		
Extracts from Vols. 1 and 2 entitled: Manhattan Railway Company; organization; franchises and contracts, dated Jan'y 1, 1918 (Ex. "A")	255	1242 1877
Schedule entitled "In re condemnation 42nd Street Spur — Documentary proof of title" (Ex. "B")	255	1618 1877
Extracts from volume entitled Statutes and Documents affecting the elevated railways in City of New York (Ex. "C")	256	1619 1877
Plan showing route of N. Y. R. R. in 42nd St. between Third Ave. and Grand Central Station, etc.; approved as per resolution, dated Dec. 30, 1879 (Ex. "D")	264	1642 1902

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Proposed plan of station at 42nd St. account of removal of 42nd St. branch (Drawing No. 22941), dated Aug. 22, 1923 (Ex. "G")	330	1645 1904 1645
Nineteen (19) Photographs showing structures and abutting properties (Exs. "H-1" to "H-19")	388	1884 1906 1908
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Conveyance and Release, 42nd St., Manhattanville and St. Nicholas Ave. Railway Co. to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-2")	446	1651
Conveyance and Release, Manhattan Storage and Warehouse Co. to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-3")	446 447	1656
Conveyance and Release, Harriette W. Goelet, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-4")	446 447	1660
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Conveyance, J. Frederic Kernochan, etc., to Manhattan Railway Co. (Ex. "J-8")	446 447	1676
Conveyance, Harriet R. McKim to Manhattan Railway Co. (Ex. "J-9")	446 447	1682
Conveyance and Release, Jas. W. Pinchot to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-10")	446 447	1686
Conveyance and Release, Cooper Union for Advancement of Science and Art, *et al.*, to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-11")	446 447	1691
Conveyance and Release, Mary R. Goelet, *et al.*, to Interborough Rapid Transit Co., N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-12")	446 447	1697
Conveyance and Release, Jas. Hernon to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-13")	446 447	1703
Conveyance and Release, Alice M. O'Brien, etc., to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-14")	446 447	1707
Conveyance and Release, Margaret J. Westcott to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-15")	446 447	1712
Conveyance and Release, Geo. Rothmann and wife to N. Y. El. R. R. Co. and Manhattan Railway Co. (Ex. "J-16")	446 447	1717
Memo. 42nd St. Spur—Franchise Value (Ex. "K" for Ident.; Ex. "K")	527 653	1720
Chart showing total revenue passengers		

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carried by Rapid Transit Railways, N. Y. City, for fiscal years (1880, 1890, 1900 to 1923) ended June 30 (Ex. "K-1")	527	1740 1910
Chart showing total revenue passengers carried by I. R. T. for fiscal years (1880, 1890, 1900 to 1923) ended June 30 (Ex. "K-2")	527	1740 1912
Chart showing ticket sales on 3rd Ave. Elevated Line for fiscal years (1910 to 1923) ended June 30 (Ex. "K-3")	527	1740 1914
Chart showing tickets sold at Rapid Transit Stations, 42nd St., N. Y. City, for fiscal years (1900, 1902, 1904, 1906, 1908, 1910, 1912, 1914, 1916, 1918, 1920 & 1922), ended June 30 (Ex. "K-4")	527	1740 1916
Chart showing total ticket sales for years 1922 (June to Dec.), 1923 (Jany. to Dec.) and 1924 (Jany. to Dec.) (Ex. "K-5")	527	1740 1918
Chart showing tickets sales at 42nd St. Spur, 42nd St. Station, 3rd Avenue Line and combined Spur and 3rd Ave. stations for years 1922, 1923 and 1924 (Jany. to Nov.) (Ex. "K-6")	527	1740 1920
Chart showing ticket sales at 42nd St. Spur, 42nd St. Station 3rd Ave. Line and combined Spur and 3rd Ave. stations for fiscal years (1900 to 1923) ended June 30th (Ex. "K-7")	527	1740 1922
Chart showing per cent. increase in total ticket sales for years ended with months indicated over previous 12 months period (Ex. "K-8")	527	1740 1924
Cost of operating 42nd Street Spur (Ex. "L")	570	1741
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Statement of ticket sales from 1913 to 1919, 38th St. and 42nd St. at 6th Ave. (Ex. "N")	693	1748
Map showing routes of Interborough Rapid Transit Co. (Ex. "O")	703	1749 1926
Order confirming report of Commissioners *re* Woolsey, *et al.*, in condemnation proceedings to acquire street easements (Ex. "P")	784	1749
Volume entitled Statutes and Documents affecting Elevated Railroads in City of New York (Ex. "Q")	785	1619 1755 1877
Fourteen (14) Photographs showing structure before spur demolition (Exs. "R" and "R-1" to "R-13")	834	1755 1884 1928
Seventeen (17) Photographs of properties after the structure removal (Exs. "S" and "S-1" to "S-16")	834	1756 1884 1930
Deed of easement, Manhattan Railway Co., *et al.*, to The 25 Broadway Corporation of 24 State St.; rec. Apr. 5, 1920, in L. 3146, p. 380 (Ex. "T")	930	1756
Map showing plottage of property as of Dec. 7, 1923 (Ex. "U")	931	1759 1932
Pamphlet of Division of Franchises of Board of Estimate and Apportionment *re* charges for space in street (Ex. "W")	979	1760
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Conveyance and Release, Rosewin Realty Co. to Manhattan Railway Co. (Ex. "Y")	994	1769
Extracts from minutes of proceedings before Public Service Commission on "Application of Board of Estimate and Apportionment relative to East		

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42nd Street Spur"—Case No. 2582 (Ex. "Y-1")	1036	1775
(Of Claimants' Exhibit Y[1], pages 1775 to 1777, 1784 to 1793 inc. of the record, being the testimony of Forest, of Bernstein, of Doino, of Schaeffer, of O'Connor and of Ryan, are printed at the request of the claimants and pages 1778 to 1783, 1793 to 1869 inc., of the record, being the testimony of McGue, of Brown, of Knox, of Meikleham, of Bernheim, of Bauer and of Schaeffer, are printed at the request of the City.)		
Statement showing detailed items of costs of work under Plan No. 22941 marked Ex. "G" (Ex. "Z")	1037	1870
Page summarizing itemized elements of cost of reconstruction work at 3rd Ave. and 42nd St. (Ex. "BB")	1041	1872
Statement showing passenger traffic by months from July, 1921, to and including June, 1925, at 42nd St. on 3rd Ave. Line, Grand Central Station, 3rd Ave. Line, etc. (Ex. "CC")	1063	1873
Statement showing passenger traffic by months from July, 1921, to and including June, 1925, at 34th St. Station on 3rd Ave. and 2nd Ave. Lines, 47th St. Station on 3rd Ave. Line and 50th St. Station on 2nd Ave. Line (Ex. "DD")	1064	1875
Exhibit of Manhattan Railway Company:		
Sheet of Earnings (Ex. "AA")	1041	1879

Exhibits of the Central Union Trust Company of New York:

Consolidated Mortgage, Manhattan Railway Co. & Metropolitan El. R. R. Co. to Central Union Trust Co., as Trustee, dated Feb. 26, 1890; rec. on Feb. 26, 1890, in L. 2538, p. 157 (Ex. "A") 1066 1881

Supplemental Indenture, Manhattan Railway Co. to Central Union Trust Co., as Trustee, dated June 13, 1899; rec. on July 12, 1899, in L. 7, p. 265 (Ex. "B") 1067 1881

Exhibit of the Equitable Trust Company of New York:

Second Mortgage, Manhattan Railway Co. to Equitable Trust Co. of N. Y., dated June 1, 1913; rec. on Mar. 2, 1916, in L. 26, p. 222, etc. (Ex. "A") 1067 1881

City's Witness—Charles A. Standfast—Direct.

1735

CHARLES A. STANDFAST, called as a witness in behalf of the City, being duly sworn, testified as follows:

Direct examination by Mr. LaMotte:

Q. Mr. Standfast, where are you employed? A. By the Transit Commission of the State of New York.

Q. In what capacity? A. Supervising inspector.

Q. As such office, is it your duty to make counts of the traffic on the different transit lines in the City? A. It is, yes, sir.

1736

The Court: What is your official position with the Transit Commission?

The Witness: As supervising inspector.

Q. Did you make a count of the passengers using the spur at 42nd Street, on November 20th, 1923, and November 21st, 1923? A. Yes, sir, we did.

Q. Will you just describe what your method was of making that count? A. The inspectors of the Commission were placed at the Grand Central end of the spur, counting the passengers entering through the turnstiles, and also inspectors were stationed at the head of the stairway, counting the passengers leaving the spur.

1737

Q. At what hours of the day did you make that count? A. From 6:10 A. M. to 12 midnight.

The Court: This was at 42nd Street?

The Witness: Yes, sir.

The Court: You counted the passengers entering and those leaving?

The Witness: Yes, sir.

Q. At 12 midnight, do the trains cease operation? A. Yes, sir.

Q. So you made the count for the entire time that the road was operating? A. Yes, we did.

1738 Q. Will you please state what the result of your count was?

The Court: What were the hours again?

The Witness: 6:10 A. M. to 12 midnight.

Q. What was the result? A. On November 20th, passengers entering, eastbound passengers, 4,844; passengers leaving, westbound, 7,465; total, 12,309. On November 21st, passengers entering, 4,647; passengers leaving, 7,490; total 12,137.

Q. Have you made a tabulation showing the results of your counts per hour? A. Yes, sir.

1739 Q. Have you a copy with you? A. I have the original.

Mr. LaMotte: I offer this count in evidence. I have a blueprint in my office, and I would like to have the blueprint substituted for this, after it is marked. Here is the blueprint now.

(Admitted in evidence and marked City's Exhibit 37.)

Q. Mr. Standfast, did you make an investigation on November 21st, 1923, to ascertain just how far, or what distance, the passengers which use the spur, used also the Third Avenue line? A. Yes, sir, we did.

1740 Q. Will you please describe to the Court just what process you went through to make that determination?

The Court: To what extent the passengers using the spur used the Third Avenue?

Mr. LaMotte: Yes.

A. As passengers leaving the Third Avenue trains boarded the shuttle we handed them a card which requested them to state at which station on the Third Avenue Elevated they boarded the train, and from those cards—

Q. How many cards did you hand out? A. We gave out 7,700 cards.

1741

Q. Where were those cards handed to the passengers? A. At the Third Avenue end of the spur.

Q. Where were they collected? A. Collected from the passengers as they left the spur at the Grand Central end.

Q. Of the 7,700 cards that you handed out, how many were returned properly filled in? A. 4,828 or 63 per cent.

Q. Have you a copy of one of those cards with you? A. No, sir, I have not.

Q. Have you made a tabulation showing just what those cards show? A. We have a tabulation 1742
here showing the information gotten from these cards, that is, where passengers boarded the Third Avenue trains, and on this tabulation it shows the distances of each station from 42nd Street and the number of persons boarding at that particular station. For instance, we had from South Ferry, which is about 4.11 miles from 42nd Street 3 persons, which gave passenger miles of 127.41, and similarly for every station where the passengers indicated that they boarded the train.

Q. Have you made a calculation showing the results of that investigation, to show how far each 1743
passenger traveled and what proportion was on the spur and what portion was on the Third Avenue Line? A. Yes.

Q. Just state what it is. A. This showed that the average passenger miles on the Third Avenue elevated was 6.012, and a ride on the shuttle is .166 which is constant.

Q. Have you estimated the total distance that the average passenger rode? A. 6.178 miles is the average distance.

The Court: The average distance of each passenger?

1744

The Witness: Yes, sir, 6,178.

Q. Does that include the spur? A. Yes, that includes the spur.

Q. What is the length of the spur? A. The length of the spur is .166 miles.

Q. Have you calculated that in percentage? A. Yes, the percentage of the Third Avenue elevated's total distance was 97.313.

Q. And on the spur? A. And on the spur it was 2.687.

Q. Mr. Standfast, is that the tabulation that you

1745 made as a result of that count (exhibiting blueprint to witness)? A. Yes, sir.

Mr. LaMotte: I offer that in evidence.

(Admitted in evidence and marked City's Exhibit 38.)

Mr. LaMotte: I offer in evidence a statement showing count made by John S. Bruce, of the Interborough Rapid Transit Company, made from Friday, April 1st, 1921, to Thursday, April 7th, 1921, both inclusive, as to the tickets dropped in the box at the spur station, Park Avenue, as compared with the ticket sales made at that station

1746 for the same period. This statement was offered in evidence by the Interborough Rapid Transit Company at the hearing before the Transit Commission and marked as Exhibit No. 1 of April 8th, 1921, in that proceeding.

Mr. Nichols: Attached to this statement is a subpoena issued to Mr. Bruce, signed by George P. Nicholson, Corporation Counsel.

Mr. LaMotte: A subpoena to Walker, not Bruce. If there is any doubt about the identification of that, I have a man to call.

Mr. Nichols: I am not questioning it.

(Admitted in evidence and marked City's Exhibit 39.)

Cross examination by Mr. Nichols:

Q. That was made, Mr. Standfast, back in 1921? A. Which one do you refer to?

Q. This Bruce one. A. I never saw that before.

The Court: You do not know anything about that one?

The Witness: No, sir.

Q. Assuming the correctness of this statement, it shows for the first day, Friday, April 1st, actual ticket sales of 4,395. Now, you have just put in evidence your more recent counts, 1923, November 20th, as showing an actual traffic of 12,301 for 1748
November 20th, and 12,137 for November 21st. Now, that is approximately three times the ticket sales back in 1921, isn't it? A. No, I think—in fact, I know that that must have been the tickets sold at the Park Avenue end of the shuttle. The figures that I read of twelve thousand odd is the entire traffic of the shuttle from both ends.

Q. You are precisely right, and it does show that the total traffic in both directions was approximately for that day, Friday, the first one, when the ticket sales were 4,395, about one-third of the actual traffic shown on the counts made on the later 1749
date, to which you have just testified, being 12,301? A. Yes, that is right.

Q. They are both, you assume, correct? A. I assume so, yes.

Q. In the November 20th counts, 1923, the more recent ones, what days were those? A. I think the 20th was on Tuesday and the 21st on Wednesday, if I remember.

Q. But you are not quite sure? A. I am not quite sure.

Q. Take Tuesday, to get a comparable day of the week, April 5th, 1921, on the exhibit just put in

1750 evidence by the City. There the ticket sales were 4,267. That again would be about one-third of the traffic shown by your actual count recently? A. About that.

Q. Have you kept track of the increase in traffic there on the spur in the last year? A. No, I have not.

Q. As to your work as supervising inspector, you are familiar with the volume of traffic in the subway at the 42nd Street station, aren't you? A. Yes.

1751 Q. That is your business, to make counts of traffic? A. It is, yes, sir.

Q. And the conditions in the subway as to density of traffic are what?

Mr. LaMotte: I object to that; he is not called to testify to that.

The Court: He is not, but he may make him his witness if he wishes. (To witness.) Are you familiar with the traffic conditions at 42nd Street station?

The Witness: Yes, sir.

The Court: During various hours of the day?

The Witness: All hours.

1752 The Court: And during rush hours?

The Witness: Yes, sir.

Q. During rush hours, are they very crowded? A. They are.

Q. Is it only with considerable difficulty and discomfort that passengers get on and off the trains during rush hours in that station? A. Yes, there is a good deal of discomfort and difficulty.

Q. Now, in getting this distance travelled by the passengers, you handed out how many of those cards? A. 7,700.

1753

Q. And how many replies did you get on that point? A. We had 5,542—

The Court: That is wrong.

The Witness: That is not quite correct; there were 441 returned blank, so that the total cards we collected were 5,542 and that left 2,258 cards that people either carried away with them—

The Court: There were actually filled out 4,428?

The Witness: Properly filled out, yes.

Q. What time of day did you hand them out? A. All day.

1754

The Court: You gave them the opportunity to fill them in while they were passing from the Third Avenue Station over to the station at 42nd Street?

The Witness: Yes, sir.

The Court: Did you furnish them with a pencil or depend upon their having one?

The Witness: We depended on them having one.

Q. Did you give them out when they were hurrying down in the morning, or when they came back at night? A. We gave them out westbound only.

The Court: All day?

1755

The Witness: Yes.

Q. You have testified before the Transit Commission hearing, that as a reason for this discrepancy between the number going east and west to which you referred, that in the morning they come down from the north and just walk across the platform, to take the shuttle? A. Yes.

Q. So that makes a very large morning traffic going west? A. Yes.

Q. And at night, you said that they are tired and go down into the subway more? A. I believe that is the reason.

1756 Q. So then, you were getting those people going in which direction with those cards? A. Westbound.

Q. Those are the people coming down in the morning from the north? A. All day long they came down.

Q. But the bulk of them come westbound from the north, because they step across the platform and take the shuttle? A. Yes.

Q. Otherwise, coming from the south they would have to go up over a pair of stairs and down
1757 again to take the shuttle? A. Yes.

Q. That is what accounts for the discrepancy as you testified before the Transit Commission, that the great volume coming down from the north went across the shuttle, while others walked? A. Yes.

Q. That means that the count was very largely from those northbound passengers going west? A. They were mostly from southbound passengers coming down in the morning and going west.

Q. You testified that the reason there were so many more people going west was that the traffic
1758 coming down—and of course it comes down in the morning from the north,—it comes down on the southbound track and right across that track, on the same level, is the spur? A. Yes.

Q. So that you can cross that short distance and go into the spur train? A. Yes.

Q. And they walk across that short distance and go into the spur train? A. Yes.

Q. That is why you get twice as many people going west as going east? A. Yes.

Q. On the other hand, coming back at night, people going north to 149th Street for example, are tired, and they mainly go in the first thing and drop down into the subway? A. Yes.

1759

Q. Isn't it in accordance with your testimony, that taking the count going west, you would catch those people that do go west, the people that come down from the north and walk across the platform and take the spur? A. My only object—

Q. Your object was to get the best results you could? A. My object was to find out where they originate from. If they originated from a station in the morning, it is natural to assume that they go home at night. I knew that most of the traffic was from the 3rd Avenue elevated to the spur, and by giving out the cards in that direction, I thought I would get the most replies—I think so yet,—and that is the reason I gave them to passengers going west, that came south in the morning and while riding across the shuttle going towards Park Avenue or Grand Central, they had time to write the station they got on at.

1760

Q. And as you testified before the Transit Commission, they were not so tired? A. That is true.

The Court: I suppose another reason for the fewer passengers going up at night is that if they get on the spur, they have to go down under Third Avenue and climb over?

1761

The Witness: Yes, sir, I think that would deter them from going that way.

The Court: Or, they would possibly walk over to Third Avenue rather than take the spur and go down under the elevated structure?

The Witness: Well, I looked that condition over, and there are not many doing that.

Q. Do you recall the testimony before the Transit Commission in 1921, at the time the first count was taken, as to the fact that the average distance travelled by those coming from the north was approximately 6 miles while as to those com-

1762 ing from the south, it was only 2? A. I don't remember; I would have to refer to it.

Q. Give us the best of your judgment as to that. A. I assume that is pretty nearly—

Q. I have the exact figures here—the testimony? A. Let us see. Passengers who rode north on the Third Avenue Elevated to 42nd Street, we have on this chart, and I think there has been very little change, an average ride of 2 miles plus.

Q. Yes, that is so,—

The Court: That is from the south?

1763 The Witness: From the south and from the north, 6 miles, so if we had figures similar to those in 1921, I assume they are pretty near as near as you can get them.

Q. So, if you take a method which takes count of the morning amount of traffic, which is principally going west, you get the long haul traffic coming from the traffic, this average 6 mile traffic, and you don't get the 2 mile traffic from the south? Do you know how nearly the traffic is divided between the north and south as testified to, taking the whole day—is it about 45 south and 55 north

1764 —approximately? A. Our cards showed 1,008 passengers came from the south and 3,820 from the north for the day.

Q. You know it was testified before the Transit Commission as a result of the all-day analysis, that the percentage from the south was 43 per cent. and the north 57 per cent.? A. It might have been testified to that way, but this count of mine don't seem to agree with it.

Q. Your count was taken going one way, and the count taken before the Transit Commission took in everything, both ways, giving the fair proportion and the entire and actual proportion of those going south?

1765

Mr. LaMotte: He can prove that Transit Commission count without interrogating this witness, who seems to know nothing about it.

The Court: Yes, but if he knows anything about the count, he can testify to it.

A. I don't remember whether I made that count in 1921 or not. I am making counts all the time all over the City.

Q. I have the actual figures. A. It probably was made by me, but there are so many of them that I cannot remember without refreshing my memory. But, answering your question, if there are more than three times as many coming from the north, as there are from the south, I would assume that the proportion is the same going back.

1766

Q. I think I have covered that, and what you take that from is the card analysis, which you got by giving them out only to the westbound passengers? A. Yes, sir.

Redirect examination by Mr. LaMotte:

Q. Is it a fact that the number of passengers using a railroad at a given station varies from day to day? A. Yes, particularly on a rapid transit railway.

1767

Q. And varies considerably? A. Yes.

Q. During the Christmas holidays, the traffic is heavy always? A. Especially in the neighborhood of 42nd Street, where there are often unusual things going on that varies the traffic in the subway. It varies 50,000 in a day very often.

Q. Is it your opinion a fair comparison to pick out, say, one day in 1921 and compare it, not with the same day in another year, but with a different day in another year, to find out whether or not the traffic on the spur has been increased? A. No,

1768 I think ticket sales, or fares collected is a better basis of comparison over a period of time.

Q. Over a period of years—two years? A. Biyearly periods we usually get at it.

Q. That is, to take one day's count in one year, and then three or four years afterwards, to take another count on another day and make a comparison, do you consider that a fair comparison? A. Not unless I knew the conditions on both days. There is a lot of variation in travel.

Recross examination by Mr. Nichols:

1769 Q. Then that would apply to your own cards that you handed out—but you do the best you can and you take counts? A. Absolutely, we always do the best we can.

JOHN BAUER, called as a witness on behalf of the City, being duly sworn, testified as follows:

Direct examination by Mr. LaMotte:

Q. Mr. Bauer, how old are you? A. 43.

Q. Where were you educated? A. I took part of my college course in a western college, finished 1770 up by taking my B. A. degree from Yale University, and subsequently took the degree of doctor of philosophy in 1908 from Yale University, in economics and finance.

Q. After you took your degree as doctor of philosophy, did you act as instructor? A. In October, 1908, I went to Cornell University as an instructor in economics and finance and continued there for two years, and then became an assistant professor of economics and finance and was there until 1914 when I took a leave of absence from the university. While I was there, I lectured on general economics; besides, I lectured on corporation

finance and on accounting and gave special instruction on public utility regulation and finance.

Q. Did you also give courses an railroad organization? A. Yes, on railroad transportation and finance and organization.

Q. During that period, were you the editor of the Economic Bulletin? A. I was assistant editor of the Economic Bulletin.

Q. Who published that? A. That was published, I believe, at Princeton at the time, and it is used for a regular review of all economic literature: 1772

Q. While you were assistant editor, did you prepare numerous reports and editorials in the financial sections of that paper? A. Yes, I went over a large proportion of the financial literature.

Q. From June, 1914 to October, 1916, were you connected with the Public Service Commission of the State of New York, First Department? A. Yes, I was statistician during that period to the Public Service Commission of the State of New York, First Department.

Q. In that capacity, what were your duties? A. Miscellaneous duties, of making special statistical, 1773 financial and traffic analyses for the Commission, both in special investigations and in rate cases and security issues. I made the financial report on several rate cases, and particularly made an elaborate report in connection with the Brooklyn Edision rate case, where I gave a report on the financial history of the company, and during that time I made an extensive survey of the street railways and franchises, financial history and operating conditions.

The Court: What year were you in the Public Service Commission?

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The Witness: I was, in this engagement as statistician, I was with the Commission from June, 1914, until October, 1916.

Q. Now, between October, 1916, and June, 1917, where were you? A. I was at Princeton University in charge of the courses of accounting, corporation finance and the graduate student course of public utility regulation and finance.

Q. Did you during that time make any special reports for the Public Service Commission of the State of New York? A. Yes, during that year I

1775 made quite an elaborate report to the Public Service Commission on the accounting of the Brooklyn Rapid Transit System, under the Rapid Transit contract No. 4 with The City of New York, and I made a similar report, though much less comprehensive, on the Interborough Rapid Transit Company, on the operation under contract No. 3 with The City of New York.

Q. Between June, 1917, and November, 1919, where were you? A. During that time I was chief of the Accounting Division of the Public Service Commission of the State of New York, First District.

1776 Q. And in that position, what were your duties? A. I had charge of all of the financial and accounting investigations relating to rate cases, security issues and in special investigations that arose. And in that connection also, I had charge of signing for certain expenditures under the Rapid Transit contracts, in the course of the determinations.

Q. In the course of your academic and professional work, have you published numerous articles on economic and financial subjects, including special studies on valuation and methods of valuation for various purposes? A. Yes, I have pub-

lished a number of articles in the American Economic Review, the Political Science Quarterly, the Quarterly Journal of Economics, the Electric Railway Journal and various other technical magazines on public utility questions of valuation, regulation and finance.

Q. And in connection with your work with the Public Service Commission, have you become acquainted with the history of the Manhattan Railway Company? A. I have.

Q. In all its phases? A. I think at one time or another I have covered most of the phases of the 1778
company's existence and operation.

Q. Now, in connection with the elevated spur which is the subject of condemnation in this proceeding, did you make a special duty of that in connection with the hearings before the Public Service Commission, to determine whether it was a necessary public utility? A. I did.

Q. And did you testify in that case? A. I did.

Q. Are you acquainted with all the reports which have been filed by the Interborough with the Transit Commission and the Public Service Commission? A. I am. 1779

(Adjourned to Wednesday, June 4, 1924, 10 A. M.)

New York, June 4th, 1924.

TRIAL RESUMED.

Continuation of the direct examination of JOHN BAUER:

By Mr. LaMotte:

Q. Doctor, have you examined the monthly reports of the ticket sales made by the Interborough Rapid Transit Company to the Transit Commission

and its predecessor, the Public Service Commission, for the years 1919 to 1923, both inclusive, which reports were marked in evidence in this proceeding as City's Exhibit Nos. 24 to 36, both inclusive? A. I have.

Q. Have you made that examination for the purpose of ascertaining the number of ticket sales made at the Grand Central Station of the Elevated spur at 42nd Street for those years? A. Yes.

Q. Please state the number of ticket sales made at that station as shown by those reports for each
1781 of the years 1919 to 1923, both inclusive. A. Beginning with 1923 and going backwards—

The Court: Are you going to take them up in that order?

The Witness: If it is permissible, I will read all the figures in that order.

Mr. LaMotte: That is the way they appear on our tabulated statement?

A. 1923, 1,358,385.

The Court: That is the number of tickets actually sold?

The Witness: Yes, at that station.

1782 The Court: You are speaking now of the Park Avenue station.

The Witness: The Park Avenue station at the Grand Central, the spur station; I shall refer to it right along as the spur station.

Q. That is eastbound passengers? A. Generally speaking, that is eastbound passengers, although of course people may have bought tickets there and have used them elsewhere.

Q. Proceed? A. 1922, 1,290,100; 1921, 1,470,860; 1920, 1,525,427; 1919, 1,681,817.

Q. Now, have you examined the count made by John S. Bruce of the Interborough Rapid Transit

1783

Company, which was marked in evidence in this proceeding as Exhibit 39, for the purpose of ascertaining the excess of passenger travel on the 42nd Street spur, eastbound, over the ticket sales made at that point? A. I did.

Q. Will you please say in percentage what the excess of eastbound passenger travel over the ticket sales as shown by the count of Mr. Bruce was? A. 6.5 per cent.

Q. In order to ascertain the total eastbound passenger travel on the spur for the years mentioned, have you added the figures which you have already testified to the excess of eastbound traffic, as shown by the tickets dropped in the box, over the ticket sales? A. I have.

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Q. And will you state what that amounts to in the case of each year?

The Court: In excess of what?

Mr. LaMotte: The figures which he gave as the ticket sales. Now, the tickets dropped in the box exceed the ticket sales. The tickets dropped in the box represent the actual passenger service on the spur and not the ticket sales.

Q. Tell us what the excess amounts to? A. That is the excess of tickets dropped compared with the ticket sales at that station?

1785

Q. Exactly? A. For the years 1923, 63,740; 1922, 83,857; 1921, 95,606; 1920, 99,153; 1919, 109,318.

Q. What then have you estimated, based upon those records as the total eastbound passenger service on the spur for the years mentioned? A. The total eastbound passengers were 1923, 1,422,123; 1922, 1,373,957; 1921, 1,566,466; 1920, 1,624,580; 1919, 1,791,135.

Q. Now, have you examined the tabulated statement showing a count made by Mr. Standfast at the

1786 42nd Street spur station of westbound passengers on November 20th, 1923, and November 21st, 1923, marked Exhibit 37 in this proceeding? A. I have.

Q. And that examination was made by you for the purpose of ascertaining the number of westbound passengers using the spur? A. Right.

Q. Does that count show that there were more westbound passengers using the spur than eastbound passengers? A. It does.

Q. How much in percentage does the westbound exceed the eastbound passengers, according to that

1787 account? A. 58 per cent., approximately, according to that count.

The Court: Westbound passengers?

The Witness: The westbound passengers exceed the eastbound number by about 58 per cent., so that the westbound is 158 per cent. of the eastbound.

The Court: Are you using the actual count both ways?

The Witness: I am using the actual counts both ways as made by Mr. Standfast, and as put in yesterday, I have forgotten the exhibit number.

1788 The Court: I thought you were taking your eastbound by using your computation of 6.5 per cent. and contrasting that with the westbound.

The Witness: I got the ratio of 58 per cent. from the Standfast count, and then I do apply that ratio to the eastbound passengers as determined and stated earlier, except for the purpose of rounding out the figures in my computations and simplifying the whole thing, and giving the benefit of the doubt to the spur, I made my computation of 58 per cent., 60 per cent., and in this computation I used the westbound traffic as 160 per cent. instead of 158 per cent. of the eastbound. That, of course, gives a slight advantage to the spur.

1789

The Court: The report shows more westbound traffic than eastbound traffic to the extent of about 58 per cent., is that correct?

The Witness: That is correct, and in my computation I have used sixty per cent., and the figures that I shall read will represent sixty per cent. instead of 58 per cent.

Q. Based upon that excess, will you please state what the total westbound passenger traffic on the spur was for each of the years 1919 to 1923? A. Assuming that the westbound traffic is 160 per cent. of the eastbound, as stated before, the total 1790
westbound traffic was for 1923, 2,275,397; 1922, 2,198,331; 1921, 2,506,345; 1920, 2,599,328; 1919, 2,865,816.

Q. Now, will you state what the total passenger service, both west and eastbound, was for each of the years mentioned? A. 1923, 3,697,520; 1922, 3,572,288; 1921, 4,072,812; 1920, 4,223,908; 1919, 4,656,951.

Q. Have you calculated the gross revenue collected from the total passenger service on the spur figured at a fare of five cents for each passenger? A. Yes, sir. 1791

The Court: Gross revenue of the whole spur?

Mr. LaMotte: Total passenger service on the whole spur.

The Court: You said gross revenue from the total passenger service?

Mr. LaMotte: Yes, sir.

The Court: That is east and west?

The Witness: Yes, east and west at five cents per passenger.

Mr. LaMotte: I have a tabulated statement.

The Court: Mark it for identification. What shall we call it?

1792

Mr. LaMotte: Tabulation showing the revenues assignable to the 42nd Street elevated spur for the fiscal years ending June 30th, for the years 1923 down to 1919, both inclusive.

(The paper was marked City's Exhibit No. 40 for Identification.)

The Court: To what extent have you covered this, down to 7?

Mr. LaMotte: Down to 7, gross revenues, yes, sir.

The Court: Have you a copy of this, Mr.
1793 Nichols?

Mr. Nichols: Yes, sir.

The Court: You are following it?

Mr. Nichols: Yes.

(Question repeated by stenographer.)

Q. Please state what it is for each year? A. 1923, $184,876; 1922, $178,614.40; 1921, $203,640.60; 1920, $211,195.40; 1919, $232,847.55.

Q. Have you examined the tabulated statement prepared by Mr. Standfast showing the average distance travelled on the spur and the Third Avenue El, by the westbound passengers, the count
1794 being made on November 21st, 1923, and being offered in evidence in this proceeding as City's Exhibit 38? A. Yes.

Q. Based on that count, Doctor, what was the average percentage of total rides taken on the 42nd Street spur? A. The average was 3.1 per cent. on the spur of the total rides on the spur and the Third Avenue combined.

The Court: Of those passengers respecting which a count was made?

The Witness: Yes.

Mr. LaMotte: That is the distance they rode?

The Court: I understand.

1795

The Witness: There were 4,828 cards collected, each giving the origin where the passenger got on the Third Avenue line; from those cards Mr. Standfast computed the percentage of the ride on the average taken on the spur, and that percentage was 3.1.

Q. In this calculation you have used five per cent.? A. Yes, sir, I used five per cent., which makes it a round computation and gives to the extent of a reasonable uncertainty the benefit to the spur.

1796

Q. Based on that percentage, how much of these total gross revenues were collected from the total passenger service should be allocated to the spur? A. On the basis explained in 1923, $9,243.80; 1922, $8,930.72; 1921, $10,182.03; 1920, $10,559.77; 1919, $11,642.38.

Q. Doctor, have you examined the June reports filed by the Interborough Rapid Transit Company with the Transit Commission and its predecessor, the Public Service Commission for each of the above mentioned years, which reports were marked in evidence in this proceeding as Exhibit No. 36, for the purpose of ascertaining the revenue

1797

received by the company from advertising, sale of power and other privileges, for the whole elevated system? A. I did.

Q. Will you state what those revenues were for those years as shown by the reports, for the entire system? A. You are referring now to advertising and other privileges?

Q. Yes, what I have mentioned in my question, advertising sale of power and other privileges. What do those reports include? A. I have under the tabulation a separation between sale of power and advertising and other privileges, but after add-

1798 *City's Witness—John Bauer—Direct.*

ing the two amounts, I can read the two amounts added together.

Q. They came out of the same report? A. They came out of the same reports.

Q. Just state what you figured for the advertising and other privileges for the elevated system, independent of the sale of power?

The Court: Of the whole elevated system leased by the Interborough?

Mr. LaMotte: Yes, sir.

A. For advertising and other privileges for the
1799 entire elevated system, the revenues for 1923, $481,327.17; 1922, $501,564.49; 1921, $503,070.88; 1920, $493,428.51; 1919, $430,886.84.

Q. What are the revenues from the sale of power?

The Court: Sale of power by whom?

Mr. LaMotte: By the Manhattan.

The Court: Sold to others?

Mr. LaMotte: Yes, sir.

The Witness: The Manhattan elevated division is charged with certain power expenses that go into the cost of operation. In turn it sells power
1800 to other companies and the receipts for sale of power are credited to the entire elevated system and not by individual lines.

The Court: I understand it now.

A. In 1923, $1,153,833.39; 1922, $841,505.56; 1921, $868,530.62; 1920, $807,573.35; 1919, $624,379.56.

Q. What then was the total miscellaneous revenues from the elevated system as a whole, other than passenger service? A. That is, combining sale of power and advertising and other privileges total for 1923, $1,635,160.56; 1922, $1,343,170.05; 1921, $1,371,601.50; 1920, $1,301,001.86; 1919, $1,055,266.40.

1801

Q. Now, Doctor, have you examined the June reports which are in evidence in this proceeding and heretofore referred to, for the five years mentioned, for the purpose of ascertaining the car mileage operated on the elevated system? A. Yes.

Q. Will you please state what the car mileage operated on the elevated system for each of those years was as shown by those reports? A. The total car mileage operated on the entire elevated system was for 1923, 64,716,517; 1922, 64,336,893; 1921, 69,233,962; 1920, 74,134,495; 1919, 79,013,929.

1802

Mr. LaMotte: At this point I offer in evidence a letter dated January 7th, 1924, addressed to L. H. LaMotte, myself, by J. L. Quackenbush, general counsel of the Interborough Rapid Transit Company containing certain data which was requested by me from that company, and which was kindly furnished in this letter. I offer that in evidence as proof of the data contained therein. I do not think Mr. Nichols will object.

Mr. Nichols: The letter covers a large number of matters. Those that are relevant to the inquiry, of course, I do not object to.

1803

The Court: May we not have it in evidence and then consider such data as is relevant?

Mr. Nichols: Yes. I merely reserve the right to object, if the occasion should offer to anything that may be irrelevant, to save the time of going through the letter now.

The Court: All right.

Mr. Roberts: We should like to have the right to verify the correctness of it. We are not bound by what Mr. Quackenbush writes, and we would like to check it and ascertain whether it is correct.

(Admitted in evidence and marked City's Exhibit 41.)

1804 *City's Witness—John Bauer—Direct.*

Q. Doctor, have you examined the letter which has just been offered in evidence and marked City's Exhibit 41, for the purpose of ascertaining the number of car miles operated on the spur for each of the above mentioned five years? A. Yes.

Q. Will you please state what the car mileage operated on the spur for each of those years as shown by that letter is? A. In 1923, 70,170; 1922, 70,033; 1921, 70,543; 1920, 80,393; 1919, 92,702.

Q. Have you calculated the percentage of car mileage operated on the spur as compared to the

1805 car mileage operated on the entire elevated system? A. I have.

Q. Please state what that percentage is for each of the years? A. 1923, .11 per cent.

Q. I do not know whether that appears clearly—? A. It is 0.11 per cent.

Q. It is eleven one-hundredths of one per cent.? A. That is correct. It is not one per cent., but eleven hundredths of one per cent., indicated in the statement here as 0.11 per cent. 1922, .11 per cent.; 1921, .10 per cent.; 1920, .11 per cent.; 1919, .12 per cent.

1806 Practically .11 per cent. on the average for the period.

Q. Have you allocated to the spur on the basis of percentage of car mileage the miscellaneous revenues collected by the road? A. Yes, sir.

Q. And what do they amount to for each of the above mentioned years? A. On the basis of the percentage just stated, the miscellaneous revenue assignable to the spur was in 1923, $1,798.68; 1922, $1,477.49; 1921, $1,371.60; 1920, $1,431.10; 1919, $1,266.32.

Q. Have you then calculated the total revenues allocated to the spur from all sources? A. Yes.

1807

Q. Will you state what that is for each of the years? A. The total revenues assignable to the spur, including passenger revenue and miscellaneous amounted in 1923, $11,042.48; 1922, $10,408.21; 1921, $11,553.63; 1920, 11,990.87; 1919, $12,908.70.

Q. Doctor, have you prepared a tabulated statement showing the figures and the items that they represent as testified to by you for each of the above years? A. Yes, sir.

Q. With explanatory remarks at the bottom of the statement? A. Yes.

Mr. LaMotte: Now, that has been marked Exhibit 40 for Identification. I offer it in evidence. 1808

Mr. Nichols: I do not object to the statement as a summary of the testimony of the witness for the aid of the Court by reason of the concise form in which it appears, but of course reserve all objections, as to the matter which appears in it which is argumentative or the conclusions of the witness.

The Court: I think that is very proper. It is simply explanatory and is offered to aid the Court.

Mr. LaMotte: It is just a resume of what he has testified to.

(Admitted in evidence and marked City's Exhibit No. 40.) 1809

Mr. LaMotte: I have another tabulation which I ask to have marked for identification.

(The paper was marked City's Exhibit No. 42 for Identification.)

The Court: This is a tabulation of what?

The Witness: Operating expenses and taxes chargeable against the 42nd Street elevated spur.

Q. Doctor, have you examined the letter from the Interborough, which is marked City's Exhibit 41 in this proceeding, for the purpose of ascertaining the expense of the operation of cars on the spur, including the platform expenses? A. Yes.

1810 Q. Will you please state what the cost of the operation of cars, including platform expenses, on the spur, as shown by this letter, was for the years mentioned 1919 to 1923, both inclusive? That is item what on your tabulated statement? A. It is 11 on the tabulated statement. On the basis of the letter referred to, the daily weekday cost for the operation of the cars was $80.40, the daily Sunday cost $51.08. For the purpose of this computation I assume 300 ordinary weekdays for operation. That meant then a total week-day's cost for the
1811 year of $24,120. Then I allowed 65 days, round figures, for Sundays and holidays, at $51.08 per day, or a total for the year of $3,320. Adding the total week day cost for the year and the total Sunday and holiday cost, we have a total expense for operation of cars for the year of $27,440. This figure I have used throughout unchanged for the entire period 1923 back to 1919, inclusive. I did this because I had no corresponding figures for each of the years, and I assumed that the general range of operating costs was at least as high previously as in 1923, and further than that the operation concerned was pivoted anyway to 1923.

1812 Q. Doctor, this calculation is based entirely upon the information furnished to the Corporation Counsel in the letter from the railroad? A. That is correct, and then I used 300 week days and 65 Sundays and holidays for round numbers.

Q. Have you examined the June monthly reports made by the transit company to the Transit Commission and its predecessor, marked Exhibit 37 in this proceeding, for the purpose of ascertaining all other possible expenses, that is all expenses of operation of the spur other than the expenses just testified to by you, that is, the operation of the cars and the platform expenses? A. I have.

1813

Q. How are those expenses shown and tabulated in those reports, under what headings? A. The June report for the entire elevated system—

Q. Just name the headings, under what headings? A. It classifies the expenses under Maintenance of Way and Structure, Maintenance of Equipment, Operation of Power Plant, Injuries and Damages, General Miscellaneous Expenses and taxes.

Q. And how are they shown in those reports, in cents per car mile? A. They are shown both in total dollars and in cents per car mile for the entire elevated system on the average, and I have used for this computation the cents per car mile.

1814

Q. Will you please state what the cents per car mile of these various items which you have described, items of expense, is as shown by those reports for each of the years? A. For each of the items?

Q. And for each of the years.

The Court: Do you mean for each of the items or just the total? Do you want them all? They are pretty well tabulated. Give them if you wish.

Q. You can total them; take in everything but taxes? A. Then all of the operating expenses, excluding taxes, amounted in 1923, 8.58 cents per car mile; 1922, 7.54 cents; 1921, 8.65 cents; 1920, 7.85 cents; 1919, 6.88 cents.

1815

Q. What was the tax? A. The taxes for 1923 were 3.42 cents per car mile.

The Court: Assessable against the spur?

Mr. LaMotte: No, that is the rate on the whole system, rate per car mile that the whole system was assessed for taxes. A. (Continuing.) 1922, 3.66 cents; 1921, 3.32 cents; 1920, 2.95 cents; 1919, 2.85 cents.

1816

Q. That makes the total cost per car mile for these items how much? A. For 1923, 12 cents per car mile; 1922, 11.20 cents; 1921, 11.97 cents; 1920, 10.80 cents; 1919, 9.73 cents.

Q. Have you estimated the amount of the above items of expense that should be allocated to the spur upon the basis of the car mileage operated on the spur as shown by the letter from the company to me, marked Exhibit 41? A. Yes.

Q. Please state what that amounts to for each of the years? A. Multiplying for each of the years

1817

the cents per car mile for the stated operating expenses and taxes by the number of car miles operated on the spur, there was a total cost for the spur in 1923, $8,420.40; 1922, $7,840.39; 1921, $8,373.99; 1920, $8,682.56; 1919, $9,019.05.

Q. Adding these last mentioned figures to the cost of operation of the cars and the platform expenses as shown by the letter of the railroad company, what is the total operating expense of the spur? A. Total operating expenses and taxes shown for the spur in 1923, $35,860.40; 1922, $35,280.39; 1921, $35,813.99; 1920, $36,122.66; 1919, $36,459.05.

1818

Q. Have you made a similar tabulation showing the expenses and taxes chargeable against the spur for each of the years mentioned, fiscal years mentioned ending June 30th? A. I have.

Q. Similar to the tabulation you made as to the income? A. Yes.

Q. This tabulation was marked Exhibit 42 for Identification? A. Yes.

Mr. LaMotte: I now offer it in evidence.

The Court: It will be received for the same purpose and with the same limitation.

(Admitted in evidence and marked City's Exhibit No. 42.)

1819

Q. Doctor, does the total operating cost of the spur, including the taxes, exceed the total revenues of all kinds from the spur? A. They do.

Q. Can you state what the excess of expenses over revenue for each of the above years is? A. I have not computed the excess separately for each year.

The Court: Let us have it if it won't be too much trouble.

The Witness: It is just a matter of subtraction, but there is not a great deal of difference, it runs pretty close together, and roughly it amounts to

1820

$25,000 a year, with very little variations.

Q. Give it accurately, subtract each year? A. (Witness proceeds to make computation.)

(Last question repeated by stenographer.)

Mr. LaMotte: Let me change that question.

Q. Will you please state, doctor, the total expenses for each of the years, the total revenue, and the excess of expenses over revenue, so as to have the figures all together? A. The total expenses were for 1923, $35,860.40; 1922, $35,280.39; 1921, $35,813.99; 1920, $36,122.66; 1919, $36,459.05.

The total revenues assignable to the spur were

1821

for 1923, $11,042.48; 1922, $10,408.21; 1921, $11,553.63; 1920, $11,990.87; 1919, $12,908.70.

The excess of expenses over revenues assignable to the spur were for 1923, $24,017.92; 1922, $24,872.18; 1921 $24,260.36; 1920, $24,131.79; 1919, $23,550.35.

Q. Doctor, is one of the chief functions of an economist to determine the principles and factors that constitute value? A. It is.

Q. What method would an economist use in computing or in estimating the value of a railroad or any other operating property? A. Economists

1822 would use the earning power of a railroad or of most industrial properties as the basis of computing the value of the properties as a whole. They would estimate or determine the annual future earnings, net earnings of a property, and then capitalize those amounts or discount them at the market rate of interest or discount. The result would be the net value or approximately the market value of the properties.

Q. Have you ever made studies along this line, along the line of railroads and other properties?

1823 A. I have.

The Court: You say the net earnings would be capitalized?

The Witness: Yes, the net earnings would be capitalized at the market rate of interest or discount.

Q. Have you examined the damage map in this proceeding for the purpose of ascertaining the area of condemnation? A. I have.

Q. In other words, you know the exact location of the property acquired in this proceeding? A. Yes.

1824 Q. Have you examined the elevated railroad structure within the area of condemnation as shown upon the damage map? A. I have.

Q. Have you formed an opinion as to the fair value of the property condemned, as of the date of condemnation? A. I have, yes.

Mr. Nichols: I object to the testimony of the witness as to value of the physical property, as his qualifications have not been shown.

Mr. LaMotte: I have not asked him the question yet.

Q. In forming an opinion as to the fair value of this property, this railroad, have you taken into

consideration the future earning capacity of the road? A. I have.

The Court: What are you coming to, the value of the railroad in the condemnation area as a railroad?

Mr. LaMotte: Everything they have got there. It is my contention that is all they own.

Q. Have you made a study of the course of travel as shown by the ticket sales at all the railroad stations along 42nd Street, including the elevated system, the Interborough Rapid Transit system, the Brooklyn Rapid Transit system, from the years 1826
1900 down to 1923? A. I have.

Q. In making that study have you examined the reports that have been filed by the companies with the Transit Commission and the Public Service Commission, its predecessor, for the purpose of ascertaining the total number of ticket sales at each one of the stations mentioned for each of the years mentioned? A. I have.

Q. And have you made a tabulation showing those figures for each of those years at each of those stations? A. Yes.

Mr. LaMotte: I ask that this statement be 1827
marked for identification.

(The paper was marked City's Exhibit No. 43 for Identification.)

The Witness: Mr. LaMotte, would you permit me to explain so as to get clear just where the figures came from?

Mr. LaMotte: All right.

The Witness: As far back as reports were filed with the Transit Commission and its predecessor, the Public Service Commission of the State of New York for the First District, I have taken the figures from those reports, and that goes back, I believe,

1828 to 1908, but for the figures going back further than the time when reports were filed with the Public Service Commission, I obtained the figures from the company's records, that is, the Interborough Rapid Transit Company's records directly. I merely wanted it clear where the figures came from.

Q. Taking the headings, the Grand Central El spur, what station is that? A. That is the Grand Central Station of the spur.

Q. Elevated spur? A. Elevated spur, from which we counted the ticket sales to represent the east

1829 bound traffic on the spur.

Q. That was at Park Avenue, before it was taken down? A. Yes.

Q. Now, the next heading is the Third Avenue El, that is the station where? A. That is the station on the Third Avenue Elevated line at 42nd Street.

Q. And the next item is Sixth Avenue El; that is the station at 42nd Street and Sixth Avenue? A. That is correct.

Q. And the next item is the Interborough Rapid Transit Times Square subway station? A. That is correct.

1830 Q. And the next item is Times Square, Brooklyn Rapid Transit Subway? A. That is right.

Q. And the next item is the Grand Central Station of the subway? A. That is right.

Q. And the next is the total, is that correct? A. That is correct.

Q. Now, take the figures under the first column, designated Grand Central El spur—

The Court: That is the spur in question?

Mr. LaMotte: The spur in question.

The Witness: Eastbound traffic.

Q. (Continuing.) In 1900, that is 23 years ago,

there were 1,413,052 tickets sold, is that correct? A. Correct.

Q. In 1923 there were 1,358,383 sold? A. Well, that is approximately correct.

Q. That is the passengers then— A. Well, no, perhaps you better let me explain—

Q. I will ask this to explain that: In 1922, under the first column, there were 1,290,100 tickets sold? A. That is correct.

Q. In 1923 you have a figure of 1,358,383, is that right? A. That is correct.

Q. Now, when were the turnstiles put in the 1832
station, Grand Central Station of the spur, what is your information? A. My information is, as ascertained from the officials of the Transit Commission that on April 3rd, 1923, the system at the Park Avenue station here in question was changed from ticket sales and dropping tickets into the ticket box, to turnstile entrances, so from that point on passengers instead of buying tickets and dropping them into the box used nickles and dropped them in the slot, then thereafter we had no longer a record of ticket sales, but a record of turnstile readings. 1833

Mr. LaMotte: This letter shows that they were installed April 3rd, 1923.

Mr. Nichols: I was just going to suggest that it was in the letter.

Q. Doctor, that means that with the installation of those turnstiles, that every passenger who used the spur going eastbound and went through that station dropped a nickle in the slot? A. That is correct.

Q. Those nickles so recorded should be equal to the number of tickets dropped in the box under the old system? A. The turnstile readings should cor-

respond to the number of tickets dropped into the box. It represents the actual eastbound traffic recorded.

Q. That is, according to the count made by the railroad, the number of tickets dropped into the box at the time that count was made shows an excess of tickets dropped in the box over the sales of tickets at that point? A. Approximately six and one-half per cent.; that is, prior to the turnstile installation the counts taken showed that there was an average excess of tickets dropped over
1835 ticket sales of six and one-half per cent.

Q. This figure of 1,358,383 is for the fiscal year ending June 30th? A. That is correct, 1923.

Q. And that includes April, May and June, three months of the operation of the turnstiles? A. That is correct.

Q. Have you, from the record obtained the monthly counts for the fiscal year ending June 30th, 1923, at that station? A. Yes.

Q. Just read what those reports show as to the monthly passengers using the spur for that fiscal year, going eastbound?

1836 The Court: What year is that?

The Witness: Fiscal year ended June 30th, 1923.

A. May I ask, wouldn't it be better to present 1922, fiscal year, and 1923, side by side?

Q. All right, give them for each month? A. I will give for each month from July to June, inclusive, for 1922 and 1923, side by side, so we can have a cross comparison of the corresponding months for the two years.

Q. Now, for 1922, that takes in from July, 1921, around to June 30th, 1922? A. Yes.

Q. 1923 begins on July 1st, 1922, and goes around to June 30th, 1923? A. That is correct.

Q. Poceed? A. July, 1922, 106,720; 1923, 108,100; August 1922, 112,320; 1923, 112,040; September, 1922, 112,360; 1923, 112,760; October, 1922, 110,900; 1923, 111,740; November, 1922, 100,720; 1923, 102,160; December, 1922, 110,040, 1923, 108,340; January, 1922, 103,960; 1923, 110,350; February, 1922, 93,620; 1923, 97,200; March, 1922, 110,920; 1923, 117,920; April, 1922, 108,440; 1923, 124,003.

Mr. LaMotte: That is the month of the beginning of the turnstiles, April, 1923, and the increase indicated by the turnstile is just the same as the increase of tickets dropped in the box over ticket 1838
sales; every man that uses the train has to go through the turnstile.

A. (Continuing.) May, 1922, 11,220; 1923, 127,803; June, 1922, 108,880; 1923, 125,975.

The Court: So through the turnstiles you get every passenger that goes eastbound.

The Witness: That is correct, whereas prior to that time the ticket sales, which was the basis of the record, were less than the total traffic going eastward, and that shows that for April there was a sharp jump upward of approximately seven per cent., somewhere along there, due to the more ac- 1839
curate recording of eastbound traffic by the turnstile readings.

Q. Turn to column 1 on Exhibit 43 for Identification, the column under Grand Central El spur, for the year 1902; it appears that the ticket sales were 1,681,438. A. That is correct.

Q. In 1903 they increased to 2,078,436. A. That is correct.

Q. Between those two years was the elevated railroad electrified? A. Yes, my information is that it was during that year that the electrification of the elevated went into operation.

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Q. Now, in 1904, the ticket sales were 2,273,486 and in 1905 they were 1,580,802? A. That is correct.

Q. Was it the fall of 1904 that the subway was opened? A. Yes.

The Court: When was it opened, fall of 1904 or 1905?

Mr. LaMotte: 1904.

Q. In 1906, when the subway was fully in operation, the service fell to 996,325? A. That is correct.

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Q. The service ran uniform until 1915, when it increased in 1915 to 1,351,233 and in 1916 to 1,531,904. Was that the year 1916, that the elevated was third tracked? A. Yes, I believe so.

Q. 1916 and 1917? A. I believe the third tracking of the Third Avenue El, I am so informed, went into operation, partially at least, in the year 1915.

Mr. LaMotte: When was it finished, the third tracking?

Mr. Nichols: It went into operation in 1916 and 1917; that is, it was put in progressive operation, because the third track could be switched to the

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outside tracks as it went along. In regard to the opening of the subway, that was opened all at once, October 16th, 1904, I think; the subway was put into operation at a definite date.

Mr. LaMotte: It was extended afterwards further north; how far did it run?

Mr. Nichols: That was contract No. 1, it ran up to West Farms.

Mr. LaMotte: West Farms went through 110th Street.

Mr. Nichols: Yes.

Mr. LaMotte: When was the Broadway section opened?

Mr. Nichols: I think that was opened at approximately the same time. I won't say that definitely.

Q. Then the ticket sales were fairly uniform until 1919, when they began to drop off. Was that the date that the Lexington Avenue subway was opened? A. Yes.

Q. Now, from 1922 to 1923, there was an increase in figures, and that includes three months of the operation of the turnstiles? A. That is correct.

Q. Take these columns for matters of comparison. In 1900 there were 5,795,057 passenger ticket 1844
sales along 42nd Street? A. That is correct.

Q. In 1923 there were 98,206,782? A. That is correct.

Q. An increase from 5,000,000 to 98,000,000, is that right? A. That is correct.

Q. On the Third Avenue El in 1900 1,244,178 ticket sales? A. Correct.

Q. In 1923 there were 3,683,883? A. That is correct.

Q. On the Sixth Avenue El in 1900 there were 3,137,827 and in 1923 there were 6,192,182? A. That is correct. 1845

Q. On the Times Square subway, at the Times Square station, in 1905 there were 3,641,345, and in 1923 there were 34,678,063? A. That is correct.

Q. And in the Grand Central subway station in 1905 there were 5,121,966 ticket sales and in 1923, 33,137,199? A. That is correct.

Q. While all the stations increased many fold, the spur in 1923, including the installation of the turnstiles was less than in 1900? A. That is correct.

Q. Have you attached to this statement an analyical summary showing the percentage of these comparisons? A. I have.

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Q. And what does it show? A. It shows that for the entire period of 1923, compared with 1900, there was a decrease of a little over four per cent. in traffic on the spur as shown by the Grand Central station, while there was an increase on all of the designated stations of 1,594.6 per cent.

Then shortening the periods of comparison, that is, taking shorter periods of comparison, in 1905 over 1900, that is, for a five year period from 1900, the spur increased 11.2 per cent. while the total increased 175.6 per cent.

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Then during the next five years, 1910 over 1905, the spur decreased 30.2, while the total increased further 103.6.

The next five years, 1915 over 1910, showed a spur increase of 11.3, while the total increased further 29.2.

The next five years, 1920 over 1915, showed a spur decrease of 12.2 per cent., and a total further increase of 81.6 per cent.

Then taking the last five year period, 1923 over 1918, the spur decreased 37.1 per cent., while the total increased during that period 74.1 per cent.

1848

Q. Doctor, isn't it a fact that these figures show that the spur never gained its losses, except by the improvement of the service on the El itself? A. They do.

Mr. LaMotte: I offer in evidence Exhibit 43 for Identification.

(Admitted in evidence and marked City's Exhibit No. 43.)

Q. Doctor, assume that the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, which is designated as the 42nd Street spur, located within the area of condemnation, and all rights, easements and franchises of

every nature whatsoever under which said elevated structure, tracks, stations, platforms, stairways and appurtenances were constructed and maintained, and also the rights, easements and franchises to further maintain said elevated railroad structures, tracks, stations, platforms, stairways and appurtenances and the right to operate cars or trains thereon and thereover was in the same ownership as the entire Manhattan Elevated Railway, and that it is operated as an elevated railroad in connection therewith and as a part thereof, and assume that the owners thereof have a perpetual 1850
franchise to operate said elevated railroad, and assume that the elevated structure with the stations and platforms and so forth are lawfully in the street and that the owners thereof have the right to maintain said structure and operate it as a railroad forever, free from any interference or right of interference from the City, the abutting property owners or the world, what in your opinion was the fair value on December 7th, 1923, of the said elevated railroad structure, tracks, stations, platform, stairways and appurtenances and all rights, easements and franchises of every nature whatsoever 1851
under which said elevated structure, tracks, stations, platforms, stairways and appurtenances were constructed and maintained and also the right, easement and franchise to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances?

Mr. Nichols: I object on the ground that the witness has not been shown to have had any experience or qualification to make the estimate which the question calls for in regard to the value of the property taken, the structural value, and the easements in particular, which are included

1852 in the question; that nothing has been shown in his experience to indicate the slightest knowledge as to those elements that he has been qualified merely as an expert in regard to the operating value of the road, as to which he has already testified. I think the testimony is incompetent, irrelevant and immaterial, coming from a witness who does not profess any qualifications upon the elements of value which I have mentioned.

The Court: Do you wish to qualify him further, Mr. LaMotte?

1853 Mr. LaMotte: I think I have fully. That is his business. That question means, according to my idea, the value of that property as a going railroad in connection with the entire railroad system, it means nothing else.

The Court: Does it take into consideration the structural value too?

Mr. LaMotte: Oh, no, the value as part of a going railroad.

Mr. Nichols: The question was very detailed in its reference to the franchises, easements and structural elements of the railroad.

1854 Mr. LaMotte: That would include them all. They could not operate without a franchise, they could not maintain their structure without the right to do it in the street, and I have to assume that those rights exist.

The Court: You are assuming that they had there the easements of light, air and access for the purpose of maintaining their structure.

Mr. LaMotte: Not as easements of light, air and access, but they have the right to maintain their structure in the street free from any interference or right of interference on the part of anyone, City, public, abutting property owners and the world,

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forever. I could not make it boader. There is your operating railroad, you have a right to operate it, as long as you have a franchise, which is perpetual, against everybody, the abutting owners, the City, the public and the world.

Mr. Nichols: I understand counsel now eliminates all value of the real estate, the easements possessed by the railroad. Yet he is asking a question as to a general valuation of the railroad in its entirety, which includes its property.

Mr. LaMotte: I do not eliminate anything. I include in the question, according to my view of the case, everything that the railroad owns, and everything that we condemn.

1856

Mr. Nichols: I object further to the question on the ground that it is hypothetical, speculative and deals with a condition of facts which is contrary to the actual property rights and interests of the elevated railroad as they exist, especially in its ownership of the easements.

The Court: If I later come to the conclusion that this is not a proper subject for expert testimony of this kind, either from your standpoint or from the standpoint of the claimant, I could so indicate in my decision and indicate that I had not considered that in reaching my conclusion.

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Mr. LaMotte: If that is ruled out, I want to have an opportunity to present another aspect.

Mr. Roberts: I object to the question on the ground that the answer would not be based on any facts whatever and is merely an opinion without any facts to support it.

By the Court:

Q. What do you understand by the term "franchise" as used in this question, what does it in-

1858

clude? A. It includes the right of the company to construct, maintain and to operate the property on 42nd Street, without interference by any private or public interests. It is simply the perfected right of the property to be there in the streets, and to be operated in the street in conjunction with the Third Avenue line maintained and operated by the Interborough Rapid Transit Company.

Q. And for what term do you understand that that right exists? A. For the period of the corporate life of the company, I believe it was 999

1859 years. I have forgotten exactly.

Mr. LaMotte: Perpetually.

The Witness: That was not my remembrance.

Mr. LaMotte: The lease is 999 years.

The Witness: Yes, it was leased for 999 years.

Mr. LaMotte: The franchise is perpetual, as I understand it.

The Court: The question assumes the franchise to be perpetual.

The Witness: Of course a value for 999 years operation would be practically the same as value for perpetual operation; that is, future earnings discounted for 999 years would give you the same

1860 result as discounted for perpetuity.

Q. What do you understand by the term "easements" as employed in that question? A. No additional right to the franchise right of the property being on the streets and maintained and operated in the streets. The easement was merely a payment for damages for private interests in the construction and maintenance of the property; the easement merely perfected the right to be on the streets, of the property being on the streets and being maintained and operated on the streets.

The Court: I think I shall permit him to answer the question.

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Mr. Roberts: I wish to object on the ground, first, that this witness is not qualified as an expert to answer such a question, secondly, on the ground that his opinion, even if qualified, would not be evidence in this case, and, thirdly, on the ground that his opinion is not based on facts.

Mr. Nichols: I merely wish to supplement the Judge's question directed to the gist of the matter this one question—

By Mr. Nichols:

1862

Q. Dr. Bauer, I understand from your testimony, correct me if my understanding is wrong, that your method of valuing a franchise and your interpretation of the meaning of the word is the earning capacity of the property involved at the time that you make your estimate? A. Yes, except that the franchise, that is my understanding of the whole proposition would have no separate value from the property as a whole. My view of this is that the value of the property as a whole, including all the rights of the property to be there and be maintained and operated—that the total value is determined by the earning power of that property, the net earnings for the future capitalized.

1863

By Mr. LaMotte:

Q. In considering the earning capacity of this road, you have also taken into consideration the possible future earnings? A. I have.

Q. Possible future earning power? A. The probable future earning power.

Q. As reflecting on its value as of December 7th, 1923? A. Yes, as a railroad proposition.

Mr. LaMotte: Is he to answer the question?

The Court: Yes.

1864

Exception taken by Mr. Roberts.

Exception taken by Mr. Nichols.

Q. Will you please answer my previous question? A. I believe there is no value, except whatever scrap value there might have been on demolition.

Mr. Nichols: Of course, it is understood our right to examine on qualifications is reserved. I did not want to interrupt at this time for that purpose.

By the Court:

1865

Q. In considering the earning power of this property, did you take in simply the earning power of the spur itself? A. The spur itself.

Q. As a part of the system? A. That is correct. I tried to segregate the operation of the spur from the operation of the system as a whole and to show the result of that separate operation.

Q. Assume, for instance, that the demolition of the spur decreased the income of the Third Avenue Railroad then what would be your answer? A. That is, the net income.

1866

Q. Yes. A. The net earnings above the expenses and taxes?

Q. Yes? A. Then of course there would be a value, dependent upon the amount of such net earnings estimated for the future and capitalized at a moderate rate of interest.

Q. But as I understand your view of it or as I understand your opinion it is that the demolition of this spur will in no way decrease the earning power of the Third Avenue system? A. That is correct, on the contrary I believe it will increase the net earning power of the system.

Mr. LaMotte: I offer in evidence certified copy of a resolution of the Board of Estimate and Ap-

1867

portionment providing for the vesting of title in the City to the property taken in this proceeding on the 7th day of December, 1923.

(Admitted in evidence and marked City's Exhibit No. 44.)

Adjourned to Monday, June 9th, 1924, at 10 A. M.

New York, June 9th, 1924.

(TRIAL RESUMED.)

1868

Mr. Hotchkiss: If the Court please, a day or two ago on behalf of the Central Union Trust Company I appeared and said that the Central Union Trust Company would like to come into this case as mortgagee. I think for the purposes of the record, inasmuch as the statutory time has elapsed within which claims can be filed, I will ask the Court to kindly endorse this original claim as filed. I think the Corporation Counsel will probably make no objection to that.

Mr. LaMotte: No objection.

1869

Mr. Hotchkiss: Then if the Court will endorse my original claim just "ordered filed" then I will file it with the clerk in the regular way.

Mr. Page: In reference to the evidence, I have mentioned the lease, and it seems to be agreeable to all counsel that certain papers be introduced in evidence by consent, because they relate to the key to the situation. The lease between the Manhattan Railway and the Interborough Rapid Transit Company, dated January 1st, 1903, as amended by supplementary agreements on dates as follows: March 15th, 1913, October 22nd, 1913, and February 17th, 1916; I present this lease, the supplements will be supplied later in the day, and I suggest it

1870

be marked as stipulated Exhibit 1, because I understand nobody objects to it, the copy being regarded as an original.

The Court: Whose exhibit is it?

Mr. Roberts: We do not object to the copy.

The Court: Who is offering the exhibit, the City?

Mr. LaMotte: I will offer the exhibit.

(The lease was admitted in evidence and marked City's Exhibit 45; the supplementary agreements were admitted in evidence and when

1871

presented are to be marked City's Exhibits 45-A, 45-B and 45-C.)

Mr. Nichols: May I make a suggestion to remove one of the greatest possible elements of contention, and that is that Mr. Page on behalf of the property owners has just submitted or offered indicates that not only is there a separate leasehold interest here, which is a claimant as well as the owner of the property, but that the status of their relations is in very great contention, the decisions of the Court being conflicting upon that point as to whether the lease has been modified or not. It

1872

occurs to me, and I have just ventured, in view of the situation that has developed, making the suggestion to Mr. Murray that it would save the labor of the Court and remove from this case these very difficult and serious contentions about the interest of the lessor and lessee if we should agree by stipulation that the entire award should be paid as a single payment to the various claimants, subject to their disposition, so that the responsibility for that disposition would rest not with the Court, but with the parties. I think that would relieve in this case a very great element of contention.

The Court: It strikes me as something that would be helpful to the Court.

Mr. Murray: May I have until tomorrow to file the formal proof of claim of the Equitable Trust Company as trustee, similar to the one Mr. Hotchkiss filed for the Central Union Trust Company?

The Court: No objection.

Mr. Page: I understand the lease went in by consent.

Mr. LaMotte: I offered in evidence the original lease.

Mr. Roberts: We do not object to the lease. 1874

The Court: When did Mr. Hotchkiss appear for the first time?

Mr. Hotchkiss: It is in the minutes, I canot remember whether it was last Tuesday or Wednesday. It was June 3rd, if your Honor please.

Mr. Murray: May it please the Court, I appear in my own name for the Equitable, not in the firm name, and I will file the proof of claim.

GABRIEL STEINBERG, called as a witness in behalf of the City, being duly sworn, testified as follows: 1875

Direct examination by Mr. LaMotte:

Q. Mr. Steinberg, what is your business? A. Photographer.

Q. Are you associated with your father? A. I am, sir.

Q. What is his name? A. Charles Steinberg.

Q. Did you make photographs of the 42nd Street spur and the adjoining property on or about December 6th, 1923? A. I did, sir.

Q. (Handing photographs.) Look at those photographs and tell me how many there are? A. 16, sir.

1876 *City's Witness—John S. Bruce—Direct.*

Q. And they are all photographs of the spur? A. They are.

Q. That is, the elevated railroad extending from the Grand Central Station to the Third Avenue station? A. Yes.

Mr. LaMotte: I offer those 16 photographs in evidence.

(Admitted in evidence and marked City's Exhibits 46-A to 46-P, inclusive.)

JOHN S. BRUCE, called as a witness in behalf
1877 of the City, being duly sworn, testified as follows:

Direct examination by Mr. LaMotte:

Q. Are you connected with the Interborough Rapid Transit Company? A. Yes, sir.

Q. In what capacity? A. Chief Clerk of the Ticket Bureau.

Q. Did you make a count for the week ending April 7th, 1921, of the tickets dropped in the box at the Grand Central Spur station? A. I did not make the count myself, I directed to have the count made.

Q. It was made under your supervision? A.
1878 Made under my supervision, yes, sir.

Q. (Handing paper.) Is this the count? A. Yes, sir.

Q. That count was of the tickets dropped in the box at the 42nd Street elevated spur station, that is the Grand Central Station, for the week ending April 7th, 1921? A. Yes.

Q. That registered simply the passengers going east, is that correct? A. Yes, sir.

Q. And the other colmn, which is to the right of it, is the tickets which were actually sold on those days at that station? A. To the left of it.

1879

Mr. LaMotte: This statement which Mr. Bruce has identified has already been marked in evidence as City's Exhibit 39, and I simply brought Mr. Bruce here to identify it.

Mr. Nichols: We made no objection to its admission.

Cross examination by Mr. Nichols:

Q. Mr. Bruce, this statement signed by Mr. Gaynor, the auditor, and yourself, was that furnished to the Borough President as part of the information which he asked in connection with the spur?

1880

A. I understand it was, yes, sir.

Q. And then it was, as counsel for the City states, introduced before the Transit Commission at the hearing in 1921? A. Yes, sir.

Q. As it was by the City here today? A. Yes, sir.

Mr. LaMotte: I offer in evidence certified copy of order and determination of the Rapid Transit Commission in Case No. 2704. That was the hearing on the question as to the alterations at 42nd Street.

(Admitted in evidence and marked City's Exhibit No. 47.)

1881

The Court: That is in respect to the changes at Third Avenue?

Mr. LaMotte: Yes. Also a certificate made pursuant to this order and determination, certified copy.

The Court: Certificate of the Commission?

Mr. LaMotte: Of the Transit Commission.

(Admitted in evidence and marked City's Exhibit No. 48.)

Mr. LaMotte: I have a statement here showing the dates at which the turnstiles, that is the nickel

1882 *Claimants' Witness—George W. Burpee—Cross.*

machines were installed at some of the stations along the elevated railway system. If Mr. Nichols can accept these dates as the proper dates, it will save me a lot of trouble.

Mr. Nichols: Do you want to have on the record the dates of change?

Mr. LaMotte: Yes, I will have it copied in the minutes.

Mr. Nichols: I have no objection to anything taken from the Public Service Commission records to save time, subject, of course, to correction.

1883 (Admitted in evidence and marked City's Exhibit No. 49.)

GEORGE W. BURPEE, recalled for further examination in behalf of the claimants, testified as follows:

Cross examination by Mr. LaMotte:

Q. Mr. Burpee, who are you employed by, the Manhattan Railway or the Interborough? A. You mean retained in this case?

Q. Yes? A. By the Interborough Rapid Transit Company.

1884 Q. How long have you been working for them, for the company? A. For the Interborough Rapid Transit Company, if I remember correctly, we were retained in August, 1923.

Q. And were you working for either company prior to that time? A. Yes, sir, I have been doing work for the Manhattan Railway Company since August, 1921, practically continuously off and on.

Q. Do you do that work in your own office or have you an office connected with the company? A. No, sir, we do the work in our own office. Of course we have to use the facilities of the Interborough in getting statistics, more or less.

Q. Did you do some work in connection with the valuation of the Manhattan Elevated Railroad system? A. Yes, sir, we did.

Q. In connection with the general plan of reorganization as proposed by the Transit Commission? A. Yes, sir.

Q. That valuation of yours, as I understand it, was based upon its reproduction cost, was it? A. It was based upon the cost to reproduce at certain specific dates, yes, sir.

Q. Now, that, of course, was a valuation which is similar to the valuations which are used in what is 1886
called rate cases, is not that so? A. Yes, sir, that is true, in public utilities.

Q. Take for instance the Consolidated Gas Company, that is a public necessity, isn't it? A. Yes, sir.

Q. That is, people couldn't live without gas. If the cost of producing gas increased so that the rate charged the consumer would not pay the operating expenses of the plant, then of course the company applies to the Public Service Commission or whoever has authority for permission to raise its rates and a hearing is had upon what the proper 1887
rate should be, isn't that right? A. Yes, sir, as I understand it.

Q. And the valuation which is placed upon a property under those circumstances is one which is a fair valuation to the owner, what he should get as a fair return, either based upon his original investment or the cost to reproduce or somewhere between those figures, isn't that correct? A. Yes, sir.

Q. This valuation which you have made in connection with the Manhattan Elevated Railway is practically upon a similar basis, what would be a

1888 fair valuation to place upon a necessary public utility? A. As a part of a public utility.

Q. Do you know that so far as the spur is concerned the Public Service Commission, after a lengthy hearing, determined that this spur was no longer necessary for the public necessity and that it constituted an incumbrance in the street, do you remember that?

Mr. Nichols: I object to the question as contrary to the determination itself, which is in evidence or should be put in evidence.

1889 Mr. LaMotte: It is in evidence, and I will read from it.

Q. Did you know that the Public Service Commission, that was the predecessor of the present Transit Commission, on April 22nd, 1921, made the following determination: "It is hereby certified, pursuant to Chapter 788 of the Laws of 1917, as amended and supplemented by Chapter 611 of the Laws of 1919, that the tracks, structures, stations and appurtenances of the Manhattan Railway Company in East 42nd, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service and con-

1890 stitutes an impediment and obstruction to the public at the said street"; did you know of that determination? A. I have read that, yes, sir.

Q. Did you ever value in a proceeding of this kind a railroad which the public officials had declared was no longer necessary for the public needs and constituted a nuisance in the street? A. No, sir. I believe I have not.

The Court: To what extent do you claim that determination was binding on the Court, Mr. LaMotte?

Mr. LaMotte: What I had in mind just then

1891

was that the valuations which this witness was familiar with and accustomed to make were valuations which are similar to those used in the rate cases, where the application is for the purpose of fixing a rate which will make a fair return on the investment for the man who has his money in the public utility.

The Court: Is there anything that would make that determination binding on the Court?

Mr. LaMotte: Not if it is worth anything, no. It only goes to the qualification of this witness.

1892

The Court: Yes, I understand. I just wanted to get your view of that determination.

Mr. LaMotte: Dr. Bauer suggests in the rate cases you have a live property and here you have what the Public Service Commission has declared to be what I term a dead property.

Mr. Nichols: This is getting argumentative.

The Court: There is no jury here. I am trying to seek light and get the views of the different counsel.

Mr. Nichols: We will prove the determination was of an entirely different character under the statute.

1893

Q. Were you in consultations with the officials of these roads when you prepared those charts? A. Yes, sir.

Q. Both the Manhattan and the Interborough? A. More particularly with the Interborough.

Q. Did they approve of those charts? A. I don't know, Mr. LaMotte, whether they approved or did not approve; I never suggested or asked for such approval.

Q. You have testified that the operating expenses of this spur were about $41,000 a year? A. That is our estimate, yes, sir.

1894 Q. Now, if the railroad operated that spur and carried no passengers, then the railroad of course would be losing $41,000 a year, isn't that correct? A. Yes, sir, that is correct, on those assumptions.

Q. If the number of passengers which traveled on the spur was 10,000,000 the revenues collected from it would be greater than if 5,000,000 travelled on the spur, isn't that correct? A. Yes, sir.

Q. So that the revenues which could be collected from the spur depends upon the number of passengers that use it? A. Yes, sir.

1895 Q. You testified to definite figures of losses which you have prognosticated will happen to the Manhattan Railway Company in the four or five years to come, haven't you? A. As an estimate.

Q. As an estimate; that is, you have given definite sums of money as a loss, isn't that correct? A. We have estimated sums of money which we thought would be lost, if the traffic reached a certain figure.

Q. You have also estimated the number of tickets which you think would have been sold at the Grand Central Station of the spur had it remained standing, have you not? A. Yes, sir, at a certain rate of increase—

1896 Q. Have you or have you not, answer my question? Let me read your testimony: "We estimate that the total traffic of the spur, that is estimated sales, for the year ending June 30th, 1924, if the spur had continued in operation would have been 1,566,808; for the next year, June 30th, 1925, 1,751,718; for the year ending June 30th, 1926, 1,946,628; for the year ending June 30th, 1927, 2,141,538; for the year ending June 30th, 1928, 2,336,448," is that correct? A. Yes, sir, that is our estimate.

Q. The loss of money which you have testified to depends, in the first instance, upon the correct-

1897

ness of your estimate as to the possible ticket sales at the Grand Central Station of the spur had it remained there, isn't that right? A. Yes, sir.

Q. In order to get the number of passengers which those ticket sales represent as traveling both ways, I understand you would multiply that figure by 2.77? A. The ticket sales by 2.77, yes, sir.

Q. Now, I notice in taking your first estimate of passengers for the year 1924, that the amount is about 11 per cent. above what the ticket sales were for 1923, which we have a record of, isn't that right? A. I believe that is about correct, yes, sir.

1898

Q. And for the next year the rate or percentage is about the same, eleven per cent., a little over eleven per cent.? A. It may be that; I haven't checked them that way, but I wouldn't dispute that.

Q. And for each of them it ranged about 11 per cent.? A. I should say that they were a constant figure per year, rather than a percentage increase; that is, the figures speak for themselves.

Q. Now, if you are mistaken in the increase which you have figured from year to year, you would be mistaken in the increase of the money which you have testified the company would lose, isn't that right? A. Yes, sir, our estimate would be incorrect to that extent.

1899

Q. Now, this increasing amount of sales of about between 11 and 12 per cent. from year to year is about the same as this normal trend which you have established for the 42nd Street spur. Look at your Exhibit K-8 and state whether the normal trend in November, 1923, of the spur was between 11 and 12 per cent.? A. It was, yes, sir.

Q. Now, that percentage or that trend is the same as the trend which is shown upon Exhibit K-5, is it not, for the spur? A. I would explain it in this

1900

way, the trend shown on Exhibit K-8 is the trend expressed in per centage, increase over the 12 months ending the month previous, while Exhibit K-5 is a trend not based on percentage, but a trend based on an actual numerical change.

Q. Exactly, but you have marked this "normal trend" and you have this marked "normal trend," aren't they the same? A. That simply means that on Exhibit K-8 this normal trend is—

Q. Represented in percentage? A. It might not be the same line shown on K-5; it is a normal trend

1901

expressed in percentage.

Q. And here (indicating) is the normal trend expressed in figures? A. By numerical changes.

Mr. Nichols: When you refer to "this" please mention the exhibit number.

Mr. LaMotte: Exhibit K-8.

Q. Of course if the percentage as shown upon this map Exhibit K-8 is wrong, then the trend also as shown on this map would be correspondingly wrong? A. No, sir, not necessarily, because Exhibit K-8 was prepared from Exhibit K-5 and reflects Exhibit K-5 rather than the reverse.

1902

Q. If the trend then as shown on Exhibit K-5 is wrong, then this percentage is wrong? A. Yes, sir, if Exhibit K-5 is incorrect Exhibit K-8 is.

Q. I call your attention to Exhibit K-5. Take first what you have on that chart in relation to the spur. You have down at the bottom the months, beginning with June, going through 1922, and then beginning again with January, 1923, right down to December of that year, isn't that correct? A. Yes, sir.

Q. You have the months down at the bottom for 1922 and 1923. The figures which you have right under the line in yellow are the number of ticket

sales at the Grand Central Station at 42nd Street for the 12 months ending—that first column—for the 12 months ending June 30th, 1922? A. That is correct, yes, sir.

Q. And the next column is for the 12 months previous, that is, counting back from July 31st, 1922? A. Yes, sir.

Q. And so on? A. Yes, sir.

Q. That is what those figures represent? A. Yes, sir.

Q. Twelve months, ending on the last day of each of the months, down at the bottom of the chart, is that right? A. Yes, sir.

Q. That chart from June up to about February and March continues on a level, isn't that right? A. Yes, sir, practically level.

Q. There is no rise at all, isn't that correct? A. Very, very slight.

Q. For instance, in March there were 117,920 ticket sales, isn't that correct? A. 117,920?

Q. Yes. A. Yes, sir, that is correct.

The Court: Have you Exhibit K-6?

Mr. LaMotte: Exhibit K-5 I am working on. I just read a figure of the actual ticket sales to compare with the figures he has there.

The Court: Where did you get those figures?

Mr. LaMotte: In evidence, from the reports that are already in evidence.

The Court: He referred to Exhibit K-6. They are on that, are they?

The Witness: Yes, sir.

Q. In March there were 117,920 ticket sales at the Grand Central station of the spur, is that correct? A. Yes, sir.

Q. In April there were 124,003 ticket sales, isn't that right? A. Yes, sir.

1906 *Claimants' Witness—George W. Burpee—Cross.*

Q. And in May there were 127,803 ticket sales? A. Yes, sir.

Q. The ticket sales therefore jumped from 117,930 in March to 127,803 in May, isn't that right? A. Yes, sir.

Q. That is an increase of about seven per cent., isn't it? A. Approximately.

Q. Now, you know, Mr. Burpee, that on the 3rd of April, 1923, the turnstiles were installed at that station, don't you? A. Yes, sir, I believe that is correct.

1907 Q. And you know that for the month of May the turnstiles were there the whole month? A. Yes, sir.

Q. And that the increase in ticket sales as shown by the turnstiles represent just about seven per cent. above what it was before any turnstiles were placed there, is that correct? A. The change from March to April was about seven per cent., yes, sir.

Q. Then May about 10 per cent.? A. Approximately 10 per cent.

Q. You know just as well as I do that Mr. Bruce testified that there were more tickets dropped in the box at that station than there were tickets sold,

1908 do you remember that? A. I heard him testify, yes, sir.

Q. That means that when the slot machines were introduced, the nickels dropped in there represented the same number of passengers which the tickets would represent if they were dropped into the box? A. That is correct, yes, sir.

Q. So that this rise which you have indicated here as a trend upwards was due to the fact in the largest measure to the introduction of those turnstiles, is that not so? A. No, sir, that does not follow at all.

1909

Q. Mr. Bruce's count means, if it means anything, that there were more people travelled east on that spur than bought tickets, doesn't it? A. I understand that the count covered a period of seven days—

Q. Just answer my question. If it means anything, it means that there were more people travelled on the spur than bought tickets? A. It does, yes, sir, if it means anything.

Q. When that slot machine was installed, it meant that it registered all the people that travelled eastward on the spur, isn't that right? A. That is right, yes, sir.

1910

Q. And if the comparison at that time was in the same proportion as it was when Mr. Bruce made his count, then I say that rise which you have indicated here as a normal trend was due to the introduction in the most part to those turnstiles, doesn't that follow? A. No, sir, because—

Q. Just one minute. If, I say, the ratio between the tickets dropped in the box and the ticket sales is the same at this time in April and May as it was when Mr. Bruce made his count, then I say your rise there is due principally to the institution of those turnstiles? A. No, sir, that is not true, because—

1911

Q. I am not asking because—if that is your answer let it stand. A. That is the answer.

The Court: Have you ascertained the ratio at the time the count was made?

Mr. LaMotte: Yes, sir, I am coming to that. The ratio was near seven per cent., between 6 and 7 per cent.

The Court: That is, the tickets dropped exceeded the purchases by seven per cent.?

1912

Mr. LaMotte: Yes, in the neighborhood of a little less than seven per cent.

Q. You struck a rising trend during the months of March, April and May as indicated by this yellow line? A. Yes, sir.

Q. You continued that out to December at a uniform angle, same angle, isn't that correct? A. No, sir, that is not quite correct.

Q. Is there any bend in that line? A. There is no bend, but it was not based on March, April and May—

1913

Q. Now, you have continued to insert figures into this chart by going back twelve months and including the month at the bottom, isn't that right? A. Yes, sir.

Q. For instance, for April, you go back twelve months, and you include one month of turnstile installation? A. That is correct, yes, sir.

Q. Whatever the turnstile showed as the passenger service over the ticket sales, you have included that extra in that one year's count, isn't that correct? A. If there is any difference it would be reflected in this trend, yes, sir.

1914

Q. Again you take May and go back 12 months, don't you? A. Yes, sir.

Q. And you include two months of ticket sales, which is equivalent to pyramiding year by year the excess of passengers over ticket sales as shown by those turnstiles, isn't that correct? A. I am not sure that I understand the question as to pyramiding.

Q. Here is what I mean, for every year you go up—Take April, May, June, July, August and September, for each one of those months you add an additional month with the turnstiles installed, isn't that correct? A. Yes, sir.

1915

Q. That would show, if the turnstiles were any indication of passenger service over tickets sold—that would simply add that month's addition to your count, isn't that true? A. That is true, yes, sir.

Q. And if that difference was continuous you could simply justify a continuation of this trend which you have shown on this chart, isn't that so, it would simply rise gradually right up?

The Court: Would it?

Q. Would it?

1916

Mr. LaMotte: I do not know whether your Honor gets my point.

The Court: I notice, as you go along the number of passengers increases some each month too.

Mr. LaMotte: No, I will come to that later.

The Court: For instance, let us start out with May, 1922, there were 1,341,000; I take it about that time you already had two months of turnstile, hadn't you?

Mr. LaMotte: A little less than two months.

The Court: June there is an increase from 41,000 to 58,000.

1917

Mr. LaMotte: That is not true, that is just what I want to demonstrate.

Q. For every month, as you progress, you have added an additional month of turnstile, isn't that correct? A. That is correct, but you have deducted something else.

Q. Just answer my question, have you added an additional month of turnstile? A. Yes, sir.

Q. These blue figures, take May, you have 1,341,306, in June you have 1,358,383, isn't that right? A. That is right, yes, sir.

Q. That shows an increase of 17,077 ticket sales. As a matter of fact, and you know it, there were

1918 less tickets sold in the month of June than in the month of May, weren't there? A. There were less tickets sold in the month of June than in the month of May, yes, sir.

The Court: Pardon me, if the turnstiles were working, how did they sell any tickets?

Mr. LaMotte: They put nickels in, but they make the returns to the Transit Commission under the heading "ticket sales."

Q. And that difference between what you show as the increase in traffic between those two figures
1919 and what was actually used there is due to the fact that in that month you included three months of turnstile, isn't that so? A. I do not believe I could answer that question just as you ask it.

Q. All right, that is your answer.

By the Court:

Q. Take Exhibit K-6, the month of June, 1923, and the corresponding month on Exhibit K-5, there seems to be an increase between May and June, according to Exhibit K-5, from 1,341,306 to 1,358,383, whereas on Exhibit K-6 the sales for May of that year were 127,803 and June 125,957? A. Yes, your
1920 Honor, that is due to the method of construction of Exhibit K-5, which is based on the figures given for May, which are the figures, ticket sales, as shown here for the 12 months ending May 30th, and the figures for June are the ticket sales for the 12 months ending June 30th, the increase is about 17,000 for the 12 months period, although it is a fact that the month of June, taken by itself shows less ticket sales than the month of May.

Q. It is a 12 month period? A. Yes, sir.

By Mr. LaMotte:

Q. This method which you have pursued has

demonstrated and supported this trend of increase which you have shown in the ticket sales on the spur? A. That is true, yes, sir.

Q. In other words, you have adopted a system of adding one additional month of turnstile operation to each month, in order that an increase may be shown in those figures, while as a matter of fact there were less tickets sold in many of those months than in previous months? A. No, sir.

By the Court:

Q. For instance, take Exhibit K-6 and follow on from May, 1922, June was 125,000, July 121,000, August 124,000, September 123,000; that was a falling off from the May sales, was it not? A. Yes, sir.

By Mr. LaMotte:

Q. And in November they were less than they were in April, yet you continue on with your trend?

By the Court:

Q. How do you account for that, Mr. Burpee? A. The 6½ per cent. by which Mr. Bruce testified his week count showed the total eastbound passengers to exceed ticket sales was a count made for a period of seven days only. We used ticket sales because we thought over a period of years ticket sales was a definite tangible figure, a safer figure to use than ticket sales plus the 6½ per cent. excess. The 6½ per cent. excess was determined on a basis of count of only seven days. I do not think that is conclusive.

Q. What I am trying to find out is, how do you get an upward trend when the ticket sales seem to be falling off to some extent? A. Your Honor if

you will compare those ticket sales with the sales of corresponding months of the previous year 1922, even if you add 6½ per cent., you will find the months sales for 1923 exceed those for 1922, even with a 6½ per cent. added on.

Q. Did you take the whole sales for the year? A. Yes, sir.

By Mr. LaMotte:

Q. But whatever increase in ticket sales those turnstiles show is reflected in that trend? A. It is yes, sir.

Q. And if there was a six per cent. excess dropped in the box over what the tickets sold would have been, that trend is just that much out of the way? A. The rise would be that much too sharp, yes, sir.

Q. It would be an additional rise each month, wouldn't it? You have accumulated by adding two months for each year's period, haven't you? A. No, sir, not as I understand it.

Q. Get this straight. The turnstiles were put in the 3rd of April, so the records of the company show? A. Yes, sir.

Q. For the year ending the 30th of April you have included one month of turnstile? A. Yes, sir.

Q. Whatever that excess as shown by the turnstile passengers over ticket sales is is included in that month, isn't it? A. Yes, sir.

Q. For the end of May you have included two such increases? A. Yes, sir.

Q. So that would show assuming the passenger traffic was exactly the same, it would show a rise for the end of May, wouldn't it, one month's rise? A. Yes, sir.

Q. And right on up, you have added three

1927

months to the next and four to the next and five to the next? A. Yes, sir, that is correct.

Q. If that trend is wrong, then your conclusion as to the number of people using the spur at future years would be affected, isn't that correct? A. It would be, yes, sir.

Q. You have done the same thing with the Third Avenue? A. Yes, sir.

Q. And you know that those turnstiles were installed, on one side on April 4th, 1923, and on the other side May 26th, 1923? A. Yes, sir, that is my understanding.

1928

Q. And you have gone ahead including an additional month of turnstile—

The Court: That is clear now.

Q. And the combination represents them both the same way, isn't ~~that~~ right? A. I don't know as I understand "the combination represents them both the same way." The combination is the—

Q. Is the sum of the two, isn't it? A. It is the sum of the two, yes, sir.

Q. At page 450 you have testified to certain percentages of increase; for instance, you have testified "The ticket sales at Second Avenue and 42nd Street from January to November, inclusive, 11 months, of 1923, were 13.8 per cent. more than they were for the corresponding eleven months of the preceding year"? A. Yes, sir.

1929

Q. Your first period included a time at which these turnstiles were installed, isn't that right? A. You mean on Second Avenue and 42nd Street?

Q. Yes, they were installed April 23rd, 1923? A. Yes.

Q. While the period that you compared it with, the previous period, was an entire period without any turnstiles? A. Yes, sir.

1930

Q. That is right? A. Yes, sir.

The Court: Can you tell from the minutes from what exhibit he was testifying?

Mr. LaMotte: Yes, the last exhibit.

The Court: Exhibit K-8.

Q. For every station that you made a comparison, your first period included some months of the turnstile, and you compared that with a previous period which included no turnstiles at all, is that right? A. Yes, sir, that is true.

Q. You made a comparison between the percent-

1931

ages you found that way with the subway, isn't that right? A. Yes, sir.

Q. And in your comparison you took two periods of the subway operation, the same period, during which entire periods the turnstiles were in enistence on the subway, isn't that right? A. I am not sure, as a matter of fact, but I would not dispute that as of the date the turnstiles went into operation on the subway stations; I would not dispute that, if you say it is so.

Q. They all went into operation, or most of them in 1921, and some of them in 1922, January, 1922,

1932

is that right? A. I believe that is right.

Q. So when you prepared your chart, Exhibit K-8, you showed the percentage of increase for the subway as declining, while you showed the increase for the elevated as going up, isn't that correct? A. Yes, sir.

Q. And the percentages which you used to indicate those directions was obtained in the way I have just spoken to you about? A. Yes, sir.

Mr. LaMotte: I move to strike out the testimony of this witness upon the ground that it is based upon charts which are misleading and which are wrong.

The Court: Motion denied.

Mr. LaMotte: I have traced this testimony right from these charts to the figures which he has given.

The Court: That can be pointed out to me. I shall not strike it out now.

Mr. LaMotte: I take an exception to the ruling.

Redirect examination by Mr. Nichols:

Q. Mr. Burpee, you were asked as to the valuations made of railroad properties for the purpose of determining rates; in all those cases the problem is that of determining the actual value of the property just as here? A. Yes, the estimated cost to reproduce.

Q. The estimated cost to reproduce? A. Yes, sir.

Q. In your determination of the cost of the Manhattan Railway properties, as to which you have been asked on cross examination, you did not attempt to value the easements at all, did you? A. We did not attempt to value the easements; we included them at cost as shown by the books of the Manhattan Railway Company and the Interborough.

Q. But you made no valuation of them? A. No, sir.

By the Court:

Q. Is it your contention, Mr. Burpee, that notwithstanding this installation of the turnstiles, that your evidence tends to show that there was a gradual increase in the business of the Third Avenue Railroad? A. Yes, sir, even if you apply the 6½ per cent. to each of the preceding months and working the trend up in this same way, you get a time at which you would realize—some of the

figures we have estimated would be postponed, but I believe the loss we have proved for the current year 1924, would be about the same, even on the basis of adding 6½ per cent. The principle is not affected. It is the time element only that is affected.

The Court: It seems to me, as a practical matter, that the demolition of that spur, Mr. LaMotte, must to some extent decrease the earning power of the Third Avenue system.

Mr. LaMotte: That is a question we are to de-

1937 termine here.

By Mr. Nichols:

Q. The figure which you gave as to the value of the easements, which merely was their cost determined as of the time the payments were made 20 years ago or whenever they were made, that was put in at the request of the counsel for the Manhattan? A. Yes, sir.

Q. To correspond with the figures determined by the Tax Department a great many years ago, which took the cost through that and other meth-

1938 ods? A. Yes.

Q. In the preparation of your chart, Exhibit K-5, you have taken yearly periods ending with successive months. Is that for the reason that in the different calendar months of the year there are what are called seasonal fluctuations? A. Yes, sir.

Q. Let us turn to the next chart, Exhibit K-6; that shows the traffic month by month, does it not? A. It shows the ticket sales month by month.

Q. And that would show the variations from month to month due to what are called in our practical railroad experience as the seasonal fluctuations? A. Yes, sir.

1939

Q. I direct your attention to the second column from the left, February, 1922. Do you note that the line there drops sharply from the preceding month and is materially below, to the extent of some 17,000 passengers; the following month of March? A. Yes, sir.

Q. What is the reason for that? A. February had 28 days as against 31 for March.

Q. Unless you take yearly periods, each of which has a February included, you would not get a fair comparison? A. No, sir, I should say not.

1940

Q. That is the reason in plotting your normal trend, you have taken periods which embrace every month of the year? A. Yes, sir, that is it exactly.

Q. In determining whether the traffic is increasing or not, when you have comparisons as to months, as Mr. LaMotte did in his examination of you, you compare the February of one year with the February of the following or the preceding year, as the case may be, do you, if your comparison is by months, one year to another? A. Yes, sir, that is correct, month by month.

Q. You would not compare February of one year with March of another year? A. No, sir.

1941

By the Court:

Q. Does this chart, Exhibit K-6, show an increase for the period following the 12 months ending January, 1922, to the period of 12 months ending March, 1923, that is, prior to the installation of the turnstiles? A. No, the chart Exhibit K-6, shows the ticket sales month by month, not twelve month periods, but month by month from January, 1922, to March, 1923, inclusive, they are ticket sales at the Grand Central Station, and beginning with

1942

April, 1923, and subsequent of course the ticket sales were the nickels dropped in the turnstiles.

Q. But it does tend to show a general upward trend during that period of time? A. Yes, sir.

Q. Up to the installation of the turnstiles? A. Yes, sir.

Q. 103,000 in January, 1922, and 117, in March, 1923? A. As a matter of fact, it is very slight, month by month during 1922, but beginning with 1923, it does show an increase.

By Mr. Nichols:

1943

Q. Comparing those two Februarys, February of 1923, where there was no turnstile, shows an increase over February of 1922? A. It does.

By the Court:

Q. About 4,000? A. Yes, sir, slightly less than 4,000.

By Mr. Nichols:

Q. So, the following month of March, 1923, when you compare it with March, 1922, similarly shows an increase? A. Yes, sir, shows an increase of

1944

7,000 ticket sales.

Q. Your line of normal trend applies to this monthly chart, with its fluctuations according to the seasons of the year, and the conditions affecting traffic familiar in our practical experience, is the same as that shown by the chart in which you take all the calendar months of the year, ending in successive monthly periods, that is the same line, is it? A. It is the same line, because it was plotted from the other chart.

Q. While that does not apply from month to month, because of these fluctuations it does apply

1945

over this period beginning January, 1922, as the diagram shows, over the entire period? A. Yes, sir.

Q. Before as well as after the turnstiles? A. Yes, sir.

Q. Now, that turnstile count, as you stated, was only for a limited number of days, taken, as the witness has stated, at the request of the Borough President and not for the purposes of this trial. No other count has been made, has there to your knowledge there? A. There is none that I know of, no, sir.

1946

Q. But you do know that in the course of the year the tickets that are dropped in the box correspond to the tickets that are sold? A. I would not say that as to any specific station.

Q. I mean generally speaking, the tickets are bought to be deposited in the box, and while you cannot tell whether the amount in the box at all stations at all times is the same, over the whole line at the end of the year, of any year, they must be very closely the same? A. Yes, sir, that is true.

Q. That is true? A. Yes, sir.

1947

Q. A man buys a ticket and he goes and puts it in the box normally; he might do something else with it or he might put in the box a ticket he had bought somewhere else, but in the line, as a whole you know as a fact that the two balance? A. They do balance.

Q. You would have to take a count at different periods of the year, at different times, as we have taken them, in order to determine the proportion of east and westbound traffic of the spur? A. I should say so, yes, sir.

Q. You have taken in all your charts, have you, the definite exact data as it is and given to the

1948 *Claimants' Witness—George W. Burpee—Redirect.*

Court the benefit, just as we did to the Borough President, the benefit of all the explanations of the difference between the ticket sales and counts for those dates, for what it is worth? A. The best I could do it, yes, sir.

Q. In order that the matter should be covered from every possible point of view, assuming that thi. ticket count in the box taken for a few days only represented a permanent and general condition, have you made an estimate on that basis to determine the ultimate facts as to which you

1949 testified on the basis of these charts? A. I have made some figures, yes, sir.

Q. As far as you have been enabled to do so, will you state the result of applying the 6½ per cent. as a permanent factor, assuming it is true? A. If the chart, Exhibit K-5, were to be constructed on a basis of addition to the ticket sales prior to April, 1923, of 6½ per cent., the line for the spur station for 1922, and January, February and March, 1923, would be at some point above that actually shown colored yellow on this chart due to this increase of 6½ per cent. From April to November

1950 of 1923, the trend calculated on that basis would still be upward, although at a less rapidly rising rate than that shown, it would still be upward, and on that basis, with the traffic for 1924, as we estimate for 1924, the lost figures would be about 60 per cent. of the total passengers carried on the spur.

By the Court:

Q. What percentage does this trend show? A. This particular chart showed about 53.7 per cent.

Q. Exhibit K-5? A. Yes, sir, for 1924. The trend would be at a less rapidly rising rate, so

1951

that the years at which we have estimated certain results would have taken place would be deferred to a time somewhat further in the future.

By Mr. Nichols:

Q. Have you any chart showing that? A. No, sir, I haven't.

Mr. Nichols: I did not realize so much stress would be laid upon it, but out of abundance of caution Mr. Burpee would be very glad to make a chart.

1952

Q. In the cross examination attention was called to the fact that less tickets were sold in June than in May, 1922. Now, Mr. Burpee, if we compare May, 1922, with 1923, it shows that in 1922 there were 111,000 tickets sold while in 1923, 127,000 tickets were sold? A. Yes, sir.

Q. Now, that illustrates the seasonal trend, does it? A. I should not say that illustrated the seasonal trend, but that shows there has been an increase for the month of May, 1923, over the month of June, 1922, of about 16,600 ticket sales.

By the Court:

1953

Q. Part was due to turnstiles and part to normal increase, as you view it? A. Part might have been due to turnstiles and the rest to normal increase, yes, sir.

By Mr. Nichols:

Q. The turnstiles were put in the subway substantially a year or two, as has been testified, before they were put in the elevated. Was there any 6½ per cent. increase in the subway or what was the result of putting turnstiles in? It does not increase the number of passengers on the entire

1954 system, does it? A. No, sir, it does not increase the number of passengers.

Q. You know that they did not increase 6½ per cent. on the subway when they were put in; it correlates just as the tickets in the boxes do with the number of tickets sold? A. Yes, sir.

Q. People do not swallow the tickets; they put them in the box, they buy them for that purpose? A. They put the ticket in the box, exactly as they put the nickel in the slot.

Q. I want to make clear that your computation

1955 here on the 6½ per cent. basis is for the purpose of abundant fairness and caution from every angle, but do you or do you not accept a count of a few days as determining that 6½ per cent. more people travel than shown by the ticket sales? A. I did not accept that, no sir.

Q. In marking Exhibit K for Identification, it was suggested that we should put in evidence the explanation which Exhibit K represents in a simple and unargumentative form; have you got that, Mr. Burpee? A. We have it.

Q. Mr. Burpee, do the explanations and descriptions which you have prepared since the objection

1956 was made to the form of Exhibit K for Identification show in a short, concise manner the sources of the information contained in the charts Exhibits K-1 to K-8, inclusive, and a description of what those charts purport to show? A. Yes, sir, there is a statement showing a description of the charts and their basis of compilation, and there is another statement showing the sources of information.

Mr. Nichols: I offer that in evidence.

Mr. LaMotte: I simply make the same objection to that as I made to the testimony of this witness in the beginning.

1957

The Court: You do not object to it as a resume of his testimony or memorandum upon which it is based?

Mr. LaMotte: No.

The Court: I will receive.

Exception taken by Mr. LaMotte.

(Admitted in evidence and marked Claimants' Exhibit K.)

Q. You were asked by counsel on cross examination, or the statement was made by him that the people who formerly used the spur were all going to the Third Avenue line, walking over to the Third Avenue station. Was there a card canvass made of the passengers, running into thousands of cards, to obtain from them, prior to the cessation of the spur, their statement as to whether they would continue to use the elevated line or not? A. There was a canvass made, yes, sir.

1958

Q. Did that show more than—

Mr. LaMotte: I object to any testimony as to what that canvass showed. We have records of the ticket sales of the Third Avenue El, north and southbound, for last December, January, February, March, April and May of this year, which show the increase in traffic that took place at that station since the spur ceased to operate. Now, that is the best record of how many people used the Third Avenue that formerly used the spur.

1959

The Court: I do not understand there is any dispute between you as to the fact that there had been an increase on the Third Avenue El station since the demolition of the spur.

Mr. LaMotte: No.

The Court: As I understand it, the claim by the railroad is that that increase would have been greater if the spur had not been taken away.

1960

Mr. Nichols: Yes, sir.

Mr. LaMotte: My claim also is that if the railroad had placed the facilities at Third Avenue which the Transit Commission decided would be necessary to take care of these people, there would have been more traveling at that station than the records now show, but the point is that he is asking this witness the count which was made as to what it was the intention of these passengers to do in the future. I say I object to that because we have actual records of what they actually did

1961 do.

Mr. Nichols: I wish to call to the attention of counsel that this is a distinct matter from the sales which goes to the question of whether passengers have or have not ceased to use the elevated line as a result of the taking down of the spur. A statement was made by counsel that the passengers did not cease to use the elevated lines.

The Court: Ask your question.

Q. Mr. Burpee, was there an accurate canvass made to determine the intention of passengers prior to the cessation of the spur, as to whether

1962 they would continue to use the elevated line or not? A. Yes, sir, there was such a canvass made.

Q. That was of your knowledge? A. There was one made of which I have knowledge, yes, sir.

Q. And you have examined it? A. Yes, sir.

MICHAEL F. FOX, called as a witness in behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. Mr. Fox, what is your business? A. Examiner in the Law Department of the Interborough.

1963

Q. How long have you been in that employment? A. 16 or 18 years.

Q. Did you on behalf of the Interborough-Manhattan Companies undertake to obtain from the passengers, in the same manner that the City conducted their card canvass to which Dr. Bauer referred the other day, a determination of their purpose of using the elevated railroad or not, if the spur were taken down? A. I did, in March, 1921, we had such a count made, passengers on the spur.

Q. And you checked that up and the men who did it? A. I checked and counted the cards myself, under my supervision.

1964

Q. Your own personal supervision? A. Personal supervision.

Q. How many passengers stated that they would discontinue using the elevated line?

Mr. LaMotte: I object to it as pure speculation. At the time when that investigation was made there was no possible way in which it could be indicated what would happen when the spur was down. The spur had ceased operation on December 7th. We have the official records of what happened there for December and the months of this year up to the present time. Those are the things that prove the fact, and it is not necessary to go into the field of speculation to establish what the effect of tearing down the spur was.

1965

The Court: You do not object on the ground that it is not the best evidence?

Mr. LaMotte: Yes, I do, it is not the best evidence; it is pure speculation.

The Court: You do not object upon the ground that this witness has not personal knowledge of the count?

Mr. LaMotte: Oh, no, I do not do that. I say

this testimony, the thing it attempts to prove, is pure speculation, and it is not the best evidence, because the records of the company we have now are the best evidence.

Mr. Nichols: Your Honor will recall that when Dr. Bauer testified as to the length of haul, he had to rely on the card canvass, there was no other way of doing it, there was a card canvass, just as ours has been made, as the witness testifies, that is subject to cross examination. I will show the circumstances under which it was made and the

1967 weight to be given to it. In such a difficult question as this, where this morning it has been brought out that counsel for the City questions the result of our compilation of the figures here, these charts questions whether Mr. Burpee is correct in his statement that he finds from the figures that it was a certain per cent., I want to introduce this evidence to shed light upon a difficult and disputed matter.

By the Court:

Q. Over what period of time were these cards

1968 turned in? A. Several days' count.

The Court: I assume this is not the most satisfactory evidence, but, Mr. LaMotte, it is very difficult in a case of this kind to get the most satisfactory evidence. Haven't we got to take it as some evidence of the expression of some of the passengers over some period of time?

Mr. LaMotte: That is 1921 that that was taken.

The Court: Three years ago. I will take it in connection with what the actual statistics show since the demolition of the spur. I think I will receive it.

Exception taken by Mr. LaMotte.

1969

By Mr. Nichols:

Q. How many passengers made replies? A. Over 3,500 or more.

Q. How many stated in their replies that they would use the subway if the elevated were discontinued?

Same objection, ruling and exception.

A. 1,102.

By the Court:

Q. Said they would use the subway? A. Yes.

1970

By Mr. Nichols:

Q. How many said they would continue to use the elevated line? A. 929.

By Mr. LaMotte:

Q. How many said they would not? A. 929 said they would use the El.

By the Court:

Q. Said they would use the El? A. Yes.

Q. What do you mean? A. Go to Third Avenue.

1971

Mr. Nichols: That is a trifle larger proportion than used by Mr. Burpee and these things check up with our own experts, we found a disparity, we naturally looked for the explanation, and I thought perhaps it would have weight in determining the correctness of our charts. That is all.

Continuation of the redirect examination of GEORGE W. BURPEE, recalled:

Redirect examination by Mr. Nichols:

Q. Mr. Burpee, you have had regard to those returns from the passengers themselves for whatever value you would attach to similar canvasses

made in your experience? You knew about this one? A. I know about the canvass, yes, sir.

Q. And you have given attention to all the other factors relating to the competition of lines like the elevated railway, when they are improved as they are at Park Avenue, and when they are 900 or 1,000 feet distant?

Mr. LaMotte: I think that is pretty leading. I object to the question as leading. He is leading this witness right along.

The Court: It is leading, but he is laying a
1973 foundation. I will allow it.

Exception taken by Mr. LaMotte.

Q. You have, have you? A. Yes, sir.

Q. And the relative importance of new conditions in developing new traffic, such as is shown on your charts, 1904, when new facilities were added, was there a comparatively large increase in the volume of traffic over the period when there were not those new facilities? A. Yes, sir, there was.

Q. And the same thing of 1918 when again there were new facilities? A. New facilities at 42nd Street have resulted in increase of traffic.

1974 Q. And a new station, such as that at 38th Street on the Sixth Avenue line, only a thousand feet or less distant from the 42nd Street station, builds up new traffic? A. Yes, sir.

Q. I mean new traffic? A. Yes.

Q. And the actual figures would show whether or not it was at the cost or how much at the expense of the 42nd Street station, would it? A. The figures would show that.

Q. Exact figures? A. Yes, sir.

Q. These charts, while they are based upon the only exact data that are available, that is, the

1975

actual ticket sales, they do not take into account all the factors of the situation which you have been giving consideration in determining whether this is the fairest and best method of working out the problem? A. No, sir.

Q. For instance, the later months, before the spur was discontinued, the increase was then running at how much per month, October and November? A. On the 42nd Street spur the increase in ticket sales for October, 1923, over October, 1922, was 21.3 per cent.

1976

By the Court:

Q. That included the turnstile returns? A. The turnstiles, yes, were in operation in October, 1923, and not in October, 1922. In November, 1923, the ticket sales were 20.9 per cent. greater than for November, 1922, and for the first six days of December, 1923, ticket sales were 18.3 per cent. greater than for the corresponding days of the previous year,

By Mr. Nichols:

1977

Q. Did you check that by the ticket sales at Second Avenue and 42nd Street? A. I compared the period from July to November with 42nd Street and Second Avenue. I did not take those individual months.

Q. If you take out your 6½ per cent. from those last months of actual traffic returns on the spur, what would that leave you, around 14 per cent.? A. That would leave for the last period which I have mentioned, December 1st to December 6th, it would leave an increase of 11.8 per cent.; for the month of November, 1923, over November, 1922, 14.4 per cent., and for October, 1923, over October, 1922, 14.8 per cent.

1978 Q. Well, now, take the chart from which you get your normal trend, Exhibit K-5; now, as counsel has pointed out, the first year, the first 12 month period ending April, 1923, had one month of turnstile in it, didn't it? A. One month of turnstile.

Q. Yes, and so on, 2, 3, 4, 5, 6, 7 and 8 months of turnstiles, but no 12 month period there had more than eight months of turnstiles, did it? A. No, sir.

Q. So in the very largest percentage of turnstiles, the factor is only two-thirds, and there are always
1979 at least one-third of the months that were comparing ticket sales with ticket sales? A. Yes, sir, that is correct.

Q. So if you assume this count of a few days, not checked or corroborated in any way or explained, should be applied to the determining of your normal trend, the greatest weight that could be given, the largest percentage that could be eliminated would be two-thirds of the six and one-half per cent., would it not? A. Yes, sir.

Q. So that brings it down to how much, about four per cent.? A. That would be a little over four per cent.

1980 Q. Take that off of your 20 or 21 per cent. shown by the most recent figures that you have on your chart and the doctor has not on his, it would be about 16 per cent., between 16 and 17 per cent.? A. It would be from 14 to 17 per cent.

Q. The latter months would be about 16 per cent.? A. Yes.

Q. What is the percentage which your normal trend represents here?

The Court: Referring to Exhibit K-5.

Mr. Nichols: Yes, I am referring to Exhibit K-5. This normal trend line he gets from that and that is the basis of the whole thing.

1981

A. I have not figured this out in percentage. It is a little over 11 per cent., between 11 and 12 per cent., that is the 12 months ending December 31st, 1923, over the 12 months ending December 31st, 1922.

Q. So if you eliminated the 6½ per cent. as far as it does appear as a factor in your normal trend chart, you would have gotten for the last few months a higher rate than you have actually used? A. That is true, yes, sir.

Q. In reference to the matter of third tracking, have you had regard to that matter in examining these charts, as to whether these increases started and were going on just about the same before that came? Just look at the chart, Exhibit K-2; that shows the whole situation of the elevated? A. If you refer to 42nd Street in particular—

1982

Q. Yes, I do? A. That would be shown I think on Exhibit K-7.

Q. K-7? A. On K-7, yes, sir. The traffic on the spur showed an appreciable increase in 1914 over 1913, in 1915 it showed an increase over 1914, and in 1916 again an increase over 1915. There was a third track in operation north of 44th Street.

1983

Q. Oh, yes, there was one there all the time, I know that, but I am assuming that was not there. Go right on. A. The third tracking of the Third Avenue elevated, known as the Manhattan Elevated improvements, the section from South Ferry or from City Hall, rather, to 149th Street, was put in operation in January, 1916, so that the 1916 fiscal year would show any increase that might be due to that for six months, and the extension from 149th Street to Bronx Park was put in operation, if I remember correctly, about July, 1917, so that its full effect would not be seen until the fiscal

year 1918. Now, the increase from 1913 on ticket sales on the spur to 1916, which would only include six months of the third tracking of the M. E. I. operations, is greater than the increase from 1916 to 1918; as far as the ticket sales on the spur are concerned, the increase started before the Manhattan Elevated improvements were put in operation and had progressed over half or approximately half of the total difference from the low of 1913 to the high of 1918, when the elevated improvements were put in operation.

1985 Q. Well, now, the same thing is shown over on the Sixth Avenue, where there wasn't any third tracking situation at all. Take Dr. Bauer's Exhibit 43, you have that before you? A. No, sir.

Mr. Nichols: Then I will ask Dr. Bauer about that.

Q. Now, the increase at that time of which you are speaking followed a long period when no new subway facilities had been provided in this City, in Manhattan, to this 42nd Street district? A. Yes, I believe that is true.

Q. The last thing was the subway in 1904, wasn't it?

1986 The Court: You have the Lexington Avenue subway that came in [illegible]18.

Mr. Nichols: Yes, that is just it, but I mean from 1904 there had been a ten-year period of gathering congestion. Dr. Bauer shows that the traffic originating in 42nd Street increased in 1900, he shows the enormous increase of 1594 per cent.

Q. After a period of traffic growth and limitation or failure to add any new traffic facilities, then there has been in your experience an increase in the traffic upon existing lines that is very marked? A. Yes, sir.

1987

Q. Inevitably? A. Yes, sir.

Q. Does your study of these figures shown on these charts indicate to your mind that that increase now is coming to the elevated lines at 42nd Street as it did in the past? A. Yes, sir.

Q. That is what it shows? A. Yes, sir.

Q. In 1921, the Transit Commission or the then Public Service Commission studied the question of future traffic in this city as a necessary basis of determining new routes? A. Yes, sir.

Q. You are familiar with all their studies of this general situation? A. Certainly with all their public studies.

1988

Q. The Transit Commission and the Corporation Counsel's office, in determining the new city routes for municipal operation as proposed, studied the question of future traffic, as they did the past traffic; as a railroad expert you know that that has to be done, don't you?

Mr. LaMotte: I object to it as immaterial, irrelevant and incompetent.

The Court: I will allow it.

Exception taken by Mr. LaMotte:

A. I know it has to be done. I do not know specifically the extent of the studies that the City has made.

1989

Q. But you do of the Transit Commission and its predecessor, the Public Service Commission? A. Yes, sir.

Q. And your experience has been in the reorganization of railways that it is necessary to determine as far as you can from the actual facts what the probable traffic is going to be? A. It is absolutely essential, yes, sir.

Q. That is what you have done all your life, isn't it, practically, as consulting engineer with the firm

1990

that has reorganized a dozen railroads or furnished the figures as the basis; that is what you do, isn't it? A. Yes, sir, that is our business.

Q. That is the practical railroad way of doing it? A. Yes, sir.

Recross examination by Mr. LaMotte:

Q. Mr. Burpee, you referred to ticket sales in October, 1923, on the spur, 135,595, as compared with the preceding month, do you remember that? A. I referred to it in comparison with the October

1991

of the preceding year, yes, sir.

The Court: This is Exhibit K-6?

Mr. LaMotte: Yes, sir.

Q. In the preceding month, September, there were 123,433, weren't there? A. Yes, sir.

Q. And in the month following there were 123,342, weren't there?

The Court: Two months following.

Mr. LaMotte: November following October.

A. In November 123,342, yes, sir.

Q. Take for instance at the 23rd Street station of the Third Avenue El, the northbound ticket

1992

sales increased from September to October, 373,000 in September and 450,000 in October, and then went back to 395,000, and the same way in the 34th Street station, and the same way in Second Avenue, it showed for October that the ticket sales on all those stations exceed either the prior month or the subsequent month. That is what you would call seasonal, isn't it, some reason for that when the increase was so uniform? A. Yes.

Q. Take the period in 1922 on the spur, referring to Exhibit K-6, take from May to November, 1922, do you follow me? A. Yes, sir.

1993

Q. There the service was fairly uniform, wasn't it? A. Yes, sir, it was.

Q. Now, take from May, 1923, to November, 1923, there the service was uniform except for October? A. Reasonably so, yes, sir.

Q. Just as uniform as the same period for 1922, wasn't it? If anything, the tendency was for downward? A. Excluding October, yes, sir.

Q. If you discount the rise which took place in April and May, and continue that line out, it is just as uniform as the preceding months in 1922, isn't that so? A. Well, that might be.

1994

Q. If you started to make your trend in May, 1923, there would be no upward tendency at all, it would be straight out, wouldn't it? It would be a zigzag line ending in November at a point even lower than what it was in May, isn't that true? A. No, sir, that would not be true if you were constructing a trend line on the basis of chart Exhibit K-5.

Q. I am talking now of the actual ticket sales; that would be true, wouldn't it? A. If you were plotting a chart in that way, yes, sir.

1995

Q. If you plotted a chart according to the actual sales at 42nd Street, on the Grand Central Spur station, that is just what it would be? A. If you plotted a curve from May to November for those specific stations, it would be just exactly as it is shown on Exhibit K-6. That is not the trend line, but the—

Q. The spur was taken down on the 7th of January? A. Yes, sir, operation ceased.

Q. So you have nothing in the future to plot except what you imagine? A. No, sir.

1996 *Claimants' Witness—George Keegan—Direct.*

GEORGE KEEGAN, called as a witness in behalf of the claimants, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Mr. Nichols: Your Honor suggested that I ought to call our traffic men to prove the actual traffic conditions of the subway, and I am going to do that.

Q. Mr. Keegan, what is your business? A. Assistant to the president and general manager of
1997 the Interborough Rapid Transit Company.

Q. How long have you been connected with the operating department of the Manhattan? A. Upwards of 21 years.

Q. During that time familiar with and in charge of the practical questions of operating the Manhattan elevated and subways? A. Yes, sir.

Q. And you are familiar with the conditions under which the operation of the various transit facilities at 42nd Street are conducted? A. I am.

Q. We are all familiar with our transit conditions in general in New York, but for the purposes
1998 of the record we have to have some description of these matters. I want you to describe the operation of the spur as it was in connection with the Third Avenue line, just where it went to, and just what the operation was in its relation to the territory which it covered. Reference has been made to 149th Street and West Farms and other points, but it has not been said just where they were and just what the conditions were under which the traffic on the Third Avenue line and the spur actually was developed. Will you just describe that as if we had never heard it before? A. The Third Avenue main line has two southern terminals, one

1999

at South Ferry and the other at City Hall. Those two lines converge at Chatham Square and operate north to Bronx Park as the main terminal and then an extension that branches off at Fordham Road and operates up Webster Avenue to Gun Hill Road, across Gun Hill Road to White Plains Road and north on White Plains Road to 241st Street.

The Court: Haven't you a map here, one of your Interborough maps?

Mr. Nichols: Yes, I think it would be more desirable to have a map in evidence.

The Court: I think so. You need not put it in now, but later on.

2000

Mr. Nichols: (Producing map.) Will you mark that for identification?

The Court: This shows it?

Mr. Nichols: Yes.

The Court: You may put it in evidence.

Mr. Nichols: I want Mr. LaMotte to look at it, because we better agree upon some map that fairly gives the whole situation.

The Court: Have you a map upon which this particular line is shown in red or colored?

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Mr. Nichols: On this map there is dated the dates upon which everything was put into operation.

Mr. LaMotte: What is the purpose of the map?

The Court: I just want to get some idea of how these lines run.

Mr. Nichols: My thought is that on an appeal this will be a perfect maze unless we have a map.

Mr. LaMotte: This map contains all the subways and everything else, all the railroads of the City. It looks to me like it would be more confusing than helpful.

2002 The Court: That is what I had in mind, that if you had a special map showing these particular lines in color, it would be better, but let us use this for the purpose of the testimony of this witness and hand in a map later on. I know the situation downtown, but after you get to the Bronx, that is what I want to know about.

The Witness: After you get to the Bronx, it runs north on Third Avenue to Bronx Park or approximately 200th Street.

The Court: Is that an elevated road or subway?

2003 The Witness: That is an elevated road. Then branching off at Fordham Road is an elevated structure that operates on Webster Avenue to Gun Hill Road, across Gun Hill Road to a connection with the subway line, and north of Gun Hill Road there is joint operation to 241st Street. At 149th Street, or really at 143rd Street, there is a physical connection with the Westchester Branch of the subway, going through Bergen Street and operating north to Bronx Park, and then over to White Plains Road, continuing to Gun Hill Road and north of that point is joint operation. Then the

2004 subway operation north of Freeman Street, with the right of free transfer, so that the Third Avenue Line and Second Avenue Line are linked with the subway in the Bronx, in that there is a free transfer to the subway that will either take them north or take them south or take them on the Westchester branch or the Jerome Avenue branch.

Q. Prior to the building of the subway to which you have referred running to 149th Street in the Bronx and West Farms, were the elevated railroads the only rapid transit in the City of New York? A. Yes.

Q. The four lines, called the Ninth, Sixth, Third

2005

and Second Avenue Lines? A. In the Boroughs of Manhattan and Bronx.

Q. I should have said Boroughs of Manhattan and Bronx. They were constructed for the most part—practically all the construction was done before the year 1880? A. Yes.

Q. In 1904 the first subway was opened, was it? A. Yes, part of the first subway.

Q. Did that run from City Hall up on the east side of the City to 42nd Street, with a station near, almost immediately joining the spur station, then turn west through 42nd Street until it got to Broadway, and then up Broadway branching one line to the Washington Heights district and the other turning to the east through 103rd Street to 149th Street in the Borough of the Bronx? A. No, the first operation that went up Lenox Avenue only went to 145th Street, and it was a few years later before the tunnel was completed under the Harlem River to permit of other operation.

2006

Q. How long was it before there were those northern extensions or completions of the first subway, going on to 1909, wasn't it? A. My recollection is that it was somewhere around 1907, 1908. Prior to that the Second Avenue elevated did operate over part of the Westchester Branch up to Freeman Street.

2007

Q. Then in 1913, was there an extensive scheme of transit construction known as the dual system adopted? A. Yes.

Q. What construction was there of subways under that? A. The principal lines were the extension of the Fourth and Lexington Avenue Line north on Lexington Avenue to Jerome Avenue, up Jerome Avenue to Woodlawn, and with a connection with the then existing lines at 149th Street and

2008 Mott Avenue, through 149th Street, up Westchester Avenue, and Boston Road to Bronx Park, with an extension from Bronx Park up White Plains Road to 241st Street. It also involved the construction and the extension of the Steinway Tunnel or Belmont Tunnel line out to Corona and Astoria.

Q. That was the first opened, that was opened June 22nd, 1915? A. Yes. Then also it provided for the extension from 42nd Street south via Seventh Avenue to a loop around South Ferry, and also to a line that diverted at Chambers Street and
2009 extended into Brooklyn, out Eastern Parkway to New Lots Road, and down Nostrand Avenue to Flatbush Avenue; also involved an extension of some of the elevated lines, the extension of the west side elevated lines through 162nd Street over to a connection with the Jerome Avenue Line, and the construction of the Webster Avenue Line, and also the construction of the Bergen Street connection.

At this point a recess was taken until 2 P. M.

AFTER RECESS.

Continuation of the direct examination of
2010 GEORGE KEEGAN.

By Mr. Nichols:

Q. Mr. Keegan, have you completed your description of the subway that was put in in Manhattan in 1904? A. Yes.

Q. The 149th Street point of junction with the elevated lines uptown is the business center of the Bronx, is it not? A. Its terminus is in the Bronx, yes.

Q. Have you the date of the next addition to transit in the 42nd Street district? I think you stated it was the Lexington Avenue Queensboro

2011

extension of the Steinway Tube. That came in 1915? A. It did.

Q. I want to get the dates in order? A. That was only as far as Jackson Avenue; it did not go out into Astoria and Corona until the fall of 1916.

Q. Is there a station of that, at the former terminus, the terminus of the Queensboro subway? A. Yes.

Q. That was opened, a part of the so-called dual plan or contract of March, 1913, was it? A. It was.

Q. And it got opened as quickly as that, because it had been completed but not put in operation prior to 1913—I mean, substantially completed? A. The subway portion of it; the elevated portion was not started until after the dual subway contracts were signed in 1913.

2012

Q. Now, on June 13, 1917, was there a subway known as the 7th Avenue Line, completed on the west side of the City, south from 42nd Street and Times Square? A. June what?

Q. The date already in evidence in June 13, 1917? A. 1917? That was just a short line into the Penn. Station at that time from 42nd Street.

Q. That was the first operation, that date? A. The first subway operation under the dual agreement.

2013

Q. And it was subsequently completed downtown on the west side? A. Yes.

Q. When was the final operation? A. August 1, 1918, the dual contracts were put in operation north of the Grand Central and south of Times Square.

Q. And finally, the Lexington Avenue main line, so-called, was opened, according to the evidence on a chart which we have, July 17, 1918, is that right? A. Not the through service; that was a ser-

vice that operated north of Grand Central, but did not make a physical connection with that line south. The two main services, what we call the H system, the longitudinal line on 7th Avenue and Broadway, and on 4th Avenue and on Lexington Avenue, with the hyphen across at 42nd Street were put in operation August 1st, 1918.

Q. So that the record will be straight 1904 was the leg of the so-called "H" operation, which we now have, running up on the east side of the City from downtown, Battery—or then the City Hall;
2015 it was later extended to the Battery—to 42nd Street. Then the cross-bar of the "H" was part of the continuous operation of that line which turned and made the upper left-hand side of the "H," by going uptown as you have described on the west side of the City. Now, under the dual scheme so-called adopted in 1913; roundabout 1918, there was put in operation under that scheme the other leg, running downtown on the left-hand side, called the 7th Avenue subway, and on the east side, the uptown leg, which we call the Lexington Avenue group now, and the former portion of the original
2016 line that constituted the cross-bar of the "H," which was then a part of the continuous operation of the original subway, now is operated as a shuttle on 42nd Street, connecting what are now two main continuous through roads, one on the east side of the City and one on the west side of the City. That describes the situation, does it? A. That is true.

Q. In addition to that, the so-called B. R. T. or Brooklyn and Manhattan Transit, as it is now called, as part of the dual system, built a line up Broadway from downtown to Times Square, then up through 7th Avenue above Times Square to 59th Street, and then turning on to the east through

2017

59th Street and under the river out into Queensboro, is that right? A. Yes.

Q. That completes the story of Rapid Transit construction as far as the 42nd district, does it? If I have left out anything, I want to get a brief but practical picture of this situation for the record? A. With the exception of the third tracking of the elevated, which came between 1914 and 1918.

Q. That was part of the dual plan too? A. Yes.

Q. There was an express track on the 3rd Avenue line running down from 129th Street to 43rd Street, just north of the 42nd Street station? A. Yes.

2018

Q. And express trains were operated on that, and switched in to the local track, the first station on the south being the 42nd Street station, with which the spur connected and on the same level? A. Yes.

Q. Now, the third tracking extended that third track down south two miles also into the City Hall station? A. Yes, more than two miles; approximately four miles.

Q. I meant to be indefinite; I said two miles or so. How is the express service now operated in the rush hours? Does the express part of it come up to capacity, or approximating that during the rush hours? A. Yes, the minimum headway operated during the rush hour is approximately one and a half minutes, which is close to the track capacity, when you consider that those trains are operated under the block signal system; that is, that they are operated under signal protection.

2019

The Court: What are your express stations in the neighborhood of 42nd Street?

The Witness: One at 42nd Street.

The Court: What is the next one south?

2020

The Witness: 23rd Street.

The Court: And north?

The Witness: 106th Street.

The Court: From 42nd Street?

The Witness: 42nd Street to 106th Street.

Q. What has been the effect of the express service in loosening up and freeing the local tracks? A. It has had this effect, in that to a large extent at the present time our rapid transit lines cater to, or are served more largely by what is termed the long-haul riders, and that long-haul rider, of

2021

course, is anxious to take the train that will get him to his destination in the shortest time.

Q. You have testified that as an operating fact, the local tracks have been freed by the new express service, taking the through traffic. Now, south of 42nd Street, for instance, the express trains there came in on the local track before the third tracking of 1916 or 1917? A. They came in around 44th or 45th Street, above the 42nd Street station.

Q. They all stopped at the 42nd Street station? A. Yes.

2022

Q. But south of that, you had all the express and local traffic for the portion of the road below 42nd Street, all on the local tracks? A. Yes.

Q. What we call the local tracks now?

The Court: How many tracks are there below 42nd Street?

The Witness: Three tracks all the way from Chatham Square to 129th Street,—as a matter of fact, to the Bridge and then north of the Bridge and across the Bridge there are four tracks to 143rd Street, and three tracks all the way up to Fordham Road.

Q. You run the express service north in the rush

hour in the afternoon and south in the morning? A. Yes, south bound until noon time, and the last train south is around noon, and the first train north. 2023

Q. What, if any, has been the effect of providing the new express service on its separate track, south of 42nd Street, in opening up the local traffic? A. It has had this effect: That during the rush period, we are operating practically to track capacity, that is, a minute and a half headway, with vastly overcrowded trains.

The Court: You are speaking now of the express service? 2024

The Witness: The express service, whereas the local service is operating on approximately a three minute headway, with an average of a seat per passenger during the rush period, at 42nd Street, which is the peak point.

Q. The local traffic is what you call the short-haul traffic? A. Yes.

Q. And the express traffic, the long-haul traffic? A. Yes.

Q. And as a practical fact in railroad experience, and as applied definitely to the Third Avenue line, the short-haul is what pays, and the long-haul does not? A. That is true of almost any road on which they have the rate of fare for the long-haul as they have for the short-haul. 2025

Q. Do you know about the traffic conditions upon the surface lines on Third Avenue and the vicinity?

Mr. LaMotte: What has that got to do with the case?

The Court: It is a general description of the traffic conditions in the locality in question.

2026

By Mr. LaMotte:

Q. These street railways are not part of your system? A. No part of the street railway system is part of the Interborough.

By Mr. Nichols:

Q. You have been engaged in the operation of the surface lines in the City? A. Yes.

Q. In the Borough of Manhattan? A. Yes.

Q. Of the 42nd Street and Madison Avenue lines? A. Crossing 42nd Street; I was general superin-

2027

tendent of transportation of the New York Railway Lines; that includes Lexington Avenue and Madison Avenue and 6th Avenue and Broadway and 7th and 8th and 9th Avenues at that time.

Q. That is the largest lineage in Manhattan of surface lines? A. It was at that time.

Q. And you were traffic manager? A. General superintendent.

Q. So, do you know, or do you not know about the traffic conditions under which the surface lines are operated? A. I do.

2028

By Mr. LaMotte:

Q. When were you general superintendent? A. From 1912 to 1920.

By Mr. Nichols:

Q. What are the traffic surface conditions of operation of the surface lines on Third Avenue in the vicinity of 42nd Street, and in the other surface lines, Madison Avenue and Lexington Avenue, as far as they have competitive relation with the elevated lines? A. The Third Avenue line has a through service under the Third Avenue elevated structure, that is, the Third Avenue surface system

2029

is a line that operates under the elevated structure from the City Hall north to 125th Street—north to 129th Street. That came company also has a crosstown line in 42nd Street. It also has a terminal for its Broadway lines in 42nd Street, west of Third Avenue. Also operating in 42nd Street from Park Avenue to Madison Avenue is the Fourth Avenue and Madison Avenue line; the Lexington Avenue line which operates through to South Ferry on Broadway—operates from Broadway to 23rd Street, or rather from South Ferry to 23rd Street on Broadway, and crosses 23rd Street to Lexington Avenue, and north on Lexington Avenue to 130th Street, is controlled by the New York Railways Company.

2030

Q. The 4th and Madison Avenue line operates from the Post Office up to 42nd Street, across 42nd Street to Madison Avenue, and north on Madison Avenue to 165th Street? A. As far as I know, those are the only lines that operate in that vicinity.

Q. Are you familiar with the conditions of vehicular traffic in those lines? A. I am.

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Q. What, if anything, is the change in the conditions of vehicular congestion that you have observed in recent years? A. The vehicular traffic on the street has naturally increased with the development that has gone along in that district, and there has been a tremendous development in what is known as the Grand Central District within recent years, where the Commodore Hotel has been constructed, the Pershing Square Building and the Bowery Savings Building at 42nd Street, and then along Park Avenue and Madison Avenue, both north and south, of 42nd Street, there has been probably the greatest building development of any place in the City, and all of that is conducive to the congestion in the street traffic.

2032 Q. Is there a growing use of vehicles and automobile trucks in the street that is causing conditions of congestion? A. Yes.

Q. That has become the limiting factor to street surface transportation in the districts you have referred to? A. It has had the effect of slowing down the movement of street traffic and as you slow down the movement of street traffic, you slow down the movement of street railway traffic.

Q. And it cripples the service? A. Not necessarily cripples it, but makes it slower and makes
2033 it more expensive.

Q. Does it have an effect on the volume of traffic using the surface lines under those conditions of slower movement? A. I can only answer that in a general sense, that insofar as you slow down travel, and you are in competition with high-speed lines, the travel gravitates to the high-speed lines.

Q. Have you speeded up your local service, since you freed the local tracks from the elevated trains on Third Avenue? A. Speeded it up. The schedule speed has remained the same, approximately 15 miles an hour. As an actual operation results in the rush hour, it has speeded it up.

2034 Q. I mean, the relief from jams and delays, is it or is it not a better and freer service since you got rid of the express tracks from the local tracks? A. Yes, I would say it is.

Q. In your practical experience, have you observed to what extent, if any, the slowing up of the movement on the surface lines, so far as they compete in this district with the Third Avenue, tends to bring to the elevated local service, increased traffic?

Mr. LaMotte Objected to; that can be shown by the ticket sales.

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The Court: I think I will receive it.

Mr. LaMotte: Exception.

A. That is true. If you provide service on the elevated line that is frequent as compared with the service on the surface lines.

Q. Only to the extent that you are familiar with the effect of the congestion, either on the surface lines or the subway lines, upon the elevated railroad traffic,—you are familiar with it? A. Yes.

Q. And you have made yourself familiar with the studies that others have made on the subject? A. Yes.

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Q. Which you can state, if asked? A. Yes.

Q. Now, does the congestion of the street traffic resulting in slowing down the street car movement, has that had, in your opinion, the effect of bringing to the elevated lines any larger number of local passengers?

Mr. LaMotte: I object to that on the further ground that the witness has already answered. He said that if the elevated line runs as many trains and as frequently as the surface cars, there might be a tendency to use the elevated as well as the surface cars.

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The Court: I do not see that there can be any dispute about this fact; if you slow up traffic on the surface lines, you are going to get more on the elevated lines.

Mr. Nichols: No, but I want it on the record.

The Court: I will allow it.

Mr. LaMotte: Exception.

Q. Has the result from the practical operating standpoint of putting in new express service on the Third Avenue lines been to put yourself in the position to get the benefit of this increase in short-haul traffic? A. It has.

2038 Q. Are you familiar with the routes that have been passed upon by the Transit Commission and its predecessors, for new rapid transit lines in the City of New York? A. I know that some of the routes they have passed upon, the routes they actually passed upon, were the Washington Heights route and the crosstown line. But those have later been rejected, I understand, by the Mayor. What the status is today, I don't know.

Q. You are familiar with the financial reports of the Comptroller as to the amount of funds avail-
2039 able to the City for the building of these new lines? A. I am familiar with the reports as I have seen them in the paper during the last few weeks.

Q. You have no reason to doubt the accuracy of your information? A. No.

Q. You came in 1903 to the elevated lines? A. I did.

Q. Was the electrification then in progress of completion? A. Yes.

Q. When was it completed? A. In June, 1903, the last locomotive was run.

Q. It began in 1902 and ran into 1903 and fin-
2040 ished in 1903? A. Yes.

Q. And the third tracking, did you testify that was completed in July, 1917? A. I did not testify, but that is the fact. Part of the through third track was there, and had always been; since I came in 1903, there had been partial third track service on the 9th Avenue line and on the 3rd Avenue line. The through service, through third tracking service on the Third Avenue and Second Avenue and the Ninth Avenue was completed some time in the summer of 1917.

Q. Is there any third track on the 6th Avenue

2041

line, through the 42nd Street district? A. No, there is not.

Q. And never has been? A. No.

Q. You pass upon all the train schedules, do you, personally? A. Yes.

Q. Has there been any change in the train schedules of the main line on 3rd Avenue, apart from the spur, since the spur discontinued—as a matter of practical operation? A. No, there has been no reduction; if there has been anything, it has been an increase.

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The Court: Mr. Nichols, didn't you have in mind to ask him about the conditions in the subway? That is the subject you had under inquiry when you had the other witness on the stand?

Mr. Nichols: Yes, thank you, your Honor.

Q. You are responsible for supervising, or for the control and study of the conditions of operation in the subway at 42nd Street? A. Yes.

Q. Just what are those conditions as a fact?

Mr. LaMotte: May I have the question?

The Court: It relates to the general condition in the subway station at 42nd Street.

Mr. LaMotte: It is too indefinite.

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The Court: I suppose you are leading up to the subway?

Mr. Nichols: Yes, that is my question.

Mr. LaMotte: He can say anything in answer to that question.

The Court: Take the Grand Central platform itself; is there congestion at that point?

The Witness: Yes, during the rush hours.

The Court: What is it you wish to bring out?

Mr. Nichols: The actual conditions of operation at 42nd Street in the subway, in regard to congestion.

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The Court: This is with a view to bringing out the congested conditions?

Mr. Nichols: Yes, your Honor.

A. That is 42nd Street on the diagonal station? That is the main station of the Lexington Avenue line?

Q. Yes.

The Court: First of all, how did it compare with conditions prior to 1904, in the old subway? I know at that point conditions were very congested at that time. Is the new station any better

2045 off in that respect?

The Witness: The new station at 42nd Street is not as well designed to take care of traffic as the old station. We have three different conditions; three different controlling conditions, you might say, at Grand Central. One is on the lower level, or the Queensboro subway. Another, the shuttle station, and the third the main through station, the Grand Central station on the Lexington Avenue line.

The Court: I assume that is the station with which we are more concerned than any other, be-

2046 cause that is the station used by passengers that might possibly take the 3rd Avenue line. We are not so much concerned with the lower station.

The Witness: To get on to conditions: On the through station, which is called the Grand Central station of the Lexington Avenue and Fourth Avenue line, that station is served by the express and local trains. The congestion at that station is probably greater than at any other station on the subway system, and on account of the physical conditions at that particular station, we are unable to operate as many trains past that station as we are at Times Square. That is due to the fact that

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approaching the station, you approach it on a short radius curve, and leaving the station, you leave it on a short radius curve, and when you are in the station, you are handicapped in the loading and unloading of passengers, by the construction of the station; that is, parts of the station; there are columns that separate the Commodore Hotel. Those are extremely large columns, and in order to protect them against electrolysis, they have enclosed them in several inches of concrete, and then put the tile on the outside of those columns. That station is further hampered by the fact that

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it has two well-holes in the loading platform that lead down to the Steinway tunnel, and also there are five stairways that lead from the loading platform onto the mezzanine platform, and from there to the street or the shuttle, or wherever the people want to go. The reason we cannot operate as many trains past that station is due to the fact that you cannot enter the station as fast as you can at Times Square; you are not able to load and unload as many people in the same length of time, and you cannot leave the station as quickly, so that there is a difference in the capacity of the two stations

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of about 12 seconds per train; in other words, we can get a minute and 48 seconds interval past at Times Square, where the best we can do is a 2-minute interval past Grand Central. That is on both the local and the express, and the riding at both stations, Times Square and Grand Central are, of course, almost the same, with the improved facilities at Times Square for handling the people.

Q. What is the practical result from the traffic standpoint of those conditions you have stated, I mean, in regard to overcrowding? A. The practical standpoint from all conditions at Grand Cen-

2050 tral, that is, those conditions I mentioned, are based largely—for instance, the length of the station stop is based on the facilities for handling the people and the number of people you handle, and at the Grand Central Station we are attempting to handle more people than ought to be handled with the train facilities. We are up to track capacity on both the local and the express platforms, and with that we have, there is no question, but what there is indecent crowding at that station, and at certain times of the year, particularly in the winter,
2051 we have conditions there, if there is the slightest interruption or the slightest inconvenience in the interval, to clog up the station to the point where we have to shut the entrances to prevent a panicky condition. We are on the verge of an overload or a panicky condition there at any time, and we have taken means of controlling passengers at that point and at Times Square.

Q. When those panicky conditions occur, have you adopted any means of signalling up to the spur to increase its rate or operation, to take care of the passengers? A. We have; in case of any
2052 blockade, both the elevated and the subway systems are provided with the blockade alarm system. If for any reason the trains are in a block or stopped, any agent along the line, or any dispatcher can send out an alarm that is recorded in every other station in the system, and if there is a block on the subway, knowledge of that fact is transmitted through this blockade signal system to the transportation officers on the elevated, and they are on the lookout for additional service. As a matter of fact, if the blockade lasts for a certain length of time, or if the nature of the blockade is such that the man in charge of the transportation

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knows that it is going to be delayed a sufficient length of time, word is sent out to the subway ticket agents to issue block tickets, that are honored on the elevated line, and the reverse of that is true. If the block is on the elevated, blockade tickets are issued that are honored on the subway lines.

The Court: Have you any means of calling it to the attention of the public, so that you will divert traffic from the subway station at the spur?

The Witness: Yes, each station is equipped with a system of cards, and if the block is on the

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subway, and it is indicated to the agent of the subway, he displays at his station a "line blocked" card and he also is instructed to block his entrances and direct the people to the elevated, if they want to be so directed.

Q. How does that work at the 42nd Street station? There are a large number of entrances to the subway at 42nd Street in the vicinity of the spur station? A. Take it at Grand Central. The people getting on at Grand Central, whether they want to go north or south, would naturally go over to the Third Avenue Line, which operates only

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about a block difference from it. The east side subway and the elevated system between 149th Street and the City Hall practically parallel each other, so that it is only natural that a passenger who wanted to go north and south with the subway blocked at 42nd Street, he would go over to the Third Avenue Line. That would be his natural course, or the Second Avenue Line, or whatever other line took him to his destination.

Q. The elevated spur station contiguous to the subway station is operated as a safety valve in the event of the overcrowding and congestion of the subway? A. Yes.

2056 Q. And people can get up to 149th Street or other points reached by the subway? A. Yes.

Q. You have referred to a tube running over to Queensboro. How far down is that below the ground? I am asking you because of its relation to developing traffic between one line that is hard to get at, and one that is easy. How far is that down? A. I should judge from the street surface, it is probably 60 to 70 feet.

Q. And the subway is already in or crossing 42nd Street? A. Yes.

2057 Q. So that a second line goes down that depth? A. Yes.

Q. For instance, in 6th Avenue, where there is a subway and a new line projected there, do you know whether that is planned to go down a comparable distance—60 feet? A. That goes under the I. R. T. subway and the B. R. T. subway, so I should judge it would be approximately 60 feet.

Q. Has your attention been called to the fact that because of the stairway difficulties of passengers using the spur, going east, that they have the stairway confronting them, and when they walk over to

2058 get over to Third Avenue, they have to get up another stairway to get over to the elevated uptown line, if they are going uptown; that that has resulted in a very much larger number of people traveling on the spur going west than those going east; it has been brought out that there is a difference variously estimated at 60 to 77 per cent. and so on. Now, applying that to the practical situation of developing traffic, new subways built at lower levels, assuming that they are to be built at lower levels, would not have the traffic developing capacity of those built near the surface, is that so?

Mr. LaMotte: I object to that.

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Mr. Nichols: Our point is that there is a limit to the competition with the subways and as the street surface competition has been checked by the congestion that has been testified to, so we have already come in 42nd Street to the necessity of building new subways at a disadvantage to the elevated, because they have to go down 60 feet, and the very spur situation illustrates to some extent the fact that the gathering of traffic is determined by the difficulties of getting to the line. That may be going into the future but this is a perpetual franchise, and we all know the vicissitudes of rapid

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transit in this town, but we have got to look forward to the future as far as we can, with what reasonable guidance we have, in determining the value of these railroads that were built 40 years ago, in response to a great public need, and that are now being taken away. This is a perpetual franchise.

Mr. LaMotte: This question assumes that the subways to be built will be erected 60 feet underground. You can assume 60 feet, you can assume 100. You can try this case upon 1,000 different theories, if you are going into the future in that way. I think it is purely speculative and fanciful.

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The Court: I do not see how the Steinway tube there has anything to do with your road.

Mr. Nichols: I will say, if you will term—it a short explanation—

The Court: What I have in mind is, it is not in competition.

Mr. Nichols: Not on the same line, but this is a thing we have to give very serious consideration to. The Bronx is the field to which we have brought transportation, and it has been our exclusive field. It has had a wonderful development in the past, we all know that. Here comes the some-

2062 what novel competitive factor. The Queensboro is being built up, and this tube right at the entrance to the station has been built to the Queensboro. It is a competitive factor in diverting traffic away from our lines. My point is that once these subways are built in 42nd Street, once the ground preempted, that competition is forever behind us in its worst phase, and the whole objective of practical railroad transportation is to get the short-haul traffic; our salvation and profit is in the short-haul traffic, and the traffic which runs along short
2063 distances is going to the lines which they can get on and off easily. We believe that it is going to be in the future more and more the local attraction of the elevated lines.

The Court: I will receive it.

Mr. LaMotte: Exception.

Q. The question is whether the difficulty of access, by reason of the lower level of the subway, is a limiting factor in developing traffic; whether the lower level of a subway built at a level approximating that of the Queensboro tube is a limiting factor in developing competitive traffic?

Mr. LaMotte: Objected to.

2064 The Court: Objection overruled.

Mr. LaMotte: Exception.

A. I think it has a decided influence where you get into convenience riding, that is, your short-haul riding, to a certain extent; or if you get into the long-haul riding, it does not enter into the question so much, but the elevated lines, and particularly the local service is getting into the same field that the bus and the surface lines are largely being driven out, by virtue of the street congestion.

The Court: I think that answers it.

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Cross examination by Mr. LaMotte:

Q. Mr. Keegan, referring to this temporary congestion, where there is a stall in the subway, and you communicate to the Third Avenue to operate more trains? A. Not to operate more trains.

Q. To do what? A. To receive the passengers from the subways.

Q. Now, assume that there is such a condition at 42nd Street, and then you advise the elevated to receive the tickets, take the passengers down, isn't that right? A. We issue to those people who have already become riders and who are in the block, we issue what we call a block ticket, which is good either on that line within 36 hours, or is good immediately on any elevated line that is contiguous to it.

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Q. If that condition existed at 42nd Street, these people would go right over to the L, to Third Avenue, wouldn't they? A. Yes.

Q. And they would go there whether the spur was there or not? A. They would have to go if the spur were not there, but it is more convenient—

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Q. As a matter of fact, it is almost as near to the Third Avenue station from some of those subway entrances, as it is to the stairway on the spur. Taking Lexington Avenue, there is an entrance to the subway there? A. Yes.

Q. Now, if a man was going out of the subway there, and was stalled, and it was a case of walking over to the stairway at Third Avenue, or walking back and climbing up the stairways of the spur, wouldn't the tendency be to walk right over to the Third Avenue L? A. Yes, but that entrance on Lexington Avenue is probably not more than 15 per cent. of the total business on the station.

2068 Q. You say this new facility, the terminal facility at 42nd Street, built when the Lexington Avenue was opened, that that is not as good as the old terminal? A. Yes.

Q. That was opened about 1918, was it not? A. August 1, 1918.

Q. Now, do you know that in 1919 there were 23,581,945 ticket sales at the Grand Central subway, while at the spur there were 1,681,817? Now, in 1920 the ticket sales at the subway increased to 28,040,334, and decreased on the spur from 1,-

2069 681,812 to 1,525,427, and in 1921, there was still an increase on the subway and a decrease on the spur?

The Court: What exhibit have you got there?

Mr. LaMotte: It is in evidence—it is an exhibit.

The Court: Exhibit 43?

Mr. LaMotte: Yes, sir.

Q. Now, in 1922, the ticket sales on the subway were 29,938,128, and on the spur, 1,290,100, do you know that? A. I judge you are reading from the records.

Q. And in 1923, it went to 33,137,199 in the sub-

2070 way, and increased on the spur from 1,290,100 to 1,358,383, and that was the year in which the turnstiles were installed at the Grand Central. So that would indicate that notwithstanding the increase in the congestion on the subway, the passengers on the spur decreased? A. Do you ask me that as a question?

Q. Isn't it a fact that those figures are true? A. Those figures are true. If you will let me explain the reasons for that, it is not due to the—if you want me to answer why that condition is so, I can answer it. If you are reading from the records

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and stating a fact, I say that is a fact, but there is a reason for those facts.

Q. Never mind that—

Mr. Nichols: You don't want the reason?

Mr. LaMotte: You can ask him that.

Q. Now, you appeared before the Transit Commission, did you not? A. Quite frequently.

Q. Weren't you there after the changes necessary at the Third Avenue station and 42nd Street? A. No.

Q. You know about it, don't you? A. Changes at—

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Q. You know that the railroad contended that it would be necessary to build a new stairway at the station at 42nd Street and Third Avenue on the south side, to take the place of the stairway which we took from them, and was connected with the spur, you know that, don't you? A. Yes.

Q. And that the Transit Commission decided that in order to take care of the traffic at that point, it was necessary, on account of the removal of the spur, to install that additional stairway on the south side of 42nd Street? A. Yes.

Q. When was that done? Last fall, wasn't it? A. Yes.

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The Court: That was at 3rd Avenue?

Mr. LaMotte: Yes, as a result of the removal of the spur.

Q. Now, that stairway has not been built, has it? A. Not yet.

Q. And the portion of the passengers that formerly used the spur and now go over there, have to use that new stairway? A. Yes.

Q. As a traffic man, isn't it your opinion that the erection of that additional stairway there would attract more passengers to the use of that

2074 station? A. I don't think so; it would not attract them, it would be less congestion on the stairway, but I think the fact that there has been no necessity for any additional stairway facilities shows that all the people that formerly used the shuttle are not now using Third Avenue.

Q. But you know that during the rush hours, it is almost impossible to get down that present stairway? A. No, but I know that there is congestion.

Q. You know that the railroad claimed before the Transit Commission that it was necessary to
2075 have that additional stairway, don't you? A. Yes.

Mr. Nichols: You know that you claimed that it was not?

Mr. LaMotte: Yes, they did not agree with you.

Redirect examination by Mr. Nichols:

Q. You were asked about the relation of proximity to facilities and the fact that the passengers would walk the distance from the spur down to Third Avenue. Are you familiar with the 38th Street station which was put in in 1914 on the 6th Avenue line, near the 42nd Street station? A. I am.

2076 Q. How far away is that? A. Four blocks.

Q. How long are those blocks? A. 250 feet blocks.

Q. That is 1,000 feet from the center of the street, less than that from the station entrance? A. Yes.

Q. Is that approximately the same distance as from the spur station to the Third Avenue station? A. Approximately the same distance.

Q. Now, I show you a statement taken from the Public Service Commission records of the traffic at the 38th Street station and the 42nd Street sta-

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tion in 6th Avenue where we put a station 1,000 feet away from the 42nd Street station?

Mr. Nichols: Is there any objection to offering that in evidence subject to your correction?

Mr. LaMotte: No objection.

The Court: What is this?

Mr. Nichols: This is headed "Effects of traffic at 42nd Street station at 6th Avenue,"—Traffic at 38th Street, 42nd Street and 6th Avenue.

Mr. LaMotte: Ticket sales?

Mr. Nichols: Yes.

Mr. LaMotte: I have no objection to any record.

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The Court: These are ticket sales, I understand?

Mr. LaMotte: If this is ticket sales—it doesn't say so.

The Court: Mark it "Statement of ticket sales."

(Admitted in evidence and marked Claimants' Exhibit N.)

The Court: What year is that?

Mr. Nichols: From the year 1913 to 1919, the year before the 38th Street station was put in.

Q. Does that show that in 1913, before the station was opened, 38th Street and 6th Avenue, the number of tickets sold at 42nd Street station of the 6th Avenue elevated line was 4,070,225? A. It does.

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Q. And the station was put in during 1914, at 38th Street? A. Yes.

Q. And did the ticket sales at the 42nd Street station in the next year increase to 4,086,449? A. It did.

Q. And the total of the two stations, being 4,842,-024, as against the figure we had given for the 42nd Street station in 1914? A. Yes.

Q. An increase of approximately 16 per cent.? A. That is true.

2080 *Claimants' Witness—George Keegan—Recross.*

Q. About the rate that the combined stations at 42nd Street and the spur at Third Avenue showed before it was taken down? A. Yes.

Q. In 1915, what was the traffic developed at the new 38th Street station? A. 2,043,960.

Q. And the total traffic of the two? A. 5,782,185.

Q. Has that total traffic increased in every subsequent year down to 1919? A. It has.

The Court: Read the figures off from year to year.

Q. The combined traffic of the two being in
2081 1916? A. 6,574,942.

Q. In 1917? A. 7,619,025.

Q. In 1918? A. 7,864,202.

Q. And in 1919? A. 9,446,340.

Q. And in the last year, the traffic developed in the 38th Street station was 3,154,318? A. 314.

Q. 314. Now, when new facilities are put in, even only 1,000 feet from the 42nd Street station, do they or do they not tend to develop new traffic? A. They do, as your conveniences increase, your riding increases.

Recross examination by Mr. LaMotte:

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Q. That would apply to stairways as well as stations? A. Increased stairways?

Q. Yes, make it more pleasant, easy to get up? A. If you have not enough stairways, for instance, if your stairway capacity is not ample, and you improve the stairway facilities, you improve the accommodation.

Q. You are talking about the 6th Avenue line. Now, do you know that in 1918, there were 4,914,288 ticket sales on the 6th Avenue L at 42nd Street, isn't that right? A. Yes, according to this report.

Q. After this 38th Street station was installed,

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the passenger service on the 42nd Street station came down, isn't that so? A. Oh, yes, naturally, that is for the first year.

Q. And then they began to both increase, isn't that right? A. They did not both increase, the combined in 1914 was heavier than the 42nd alone in 1913.

Q. That is, they both together increased from 4,842,000 in 1914 to 9,446,340 in 1919? A. In 1919.

The Court: It is quite significant, isn't it, that notwithstanding the building of the 38th Street station, the sales at 42nd Street were more than they were in 1913, according to your Exhibit 43. In 1914, before the station was established at 38th Street, the sales at 42nd Street and 6th Avenue seemed to be even greater. What accounts for that situation?

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Mr. LaMotte: I account for it on the general increase on the case.

The Court: At that rate, it would pay you to put a station at every block upon your line?

The Witness: That is what I contend, your Honor, that that is what you will get to.

Q. What I mean is, notwithstanding the enormous increase at every station on 42nd Street, during all those years, there was a decrease on the spur, and the only indication of an increase was in 1923 when they installed the turn-stiles—notwithstanding all those increases? A. If you will ask me why that was, I will tell you.

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By Mr. Nichols:

Q. I will ask you why that was? A. That was due to the fact that the "H" system—

Mr. LaMotte: Let Mr. Nichols ask it.

The Court: He did.

The Witness: It was that on August 1st, 1918,

the east side of the "H" system was put in operation, and that meant that the Third Avenue north of 42nd Street, was subjected to four-track line competition one block removed from the Third Avenue Elevated. That is the reason for that decrease and that decrease is reflected in practically every line, every station along the Third Avenue line, and it is a most natural consequence, on account of a four-track high-speed line paralleling the Third Avenue in Lexington Avenue, one block removed, and a great many of the stations did not
2087 recover from that until within the last year or two.

The Court: Now, you think they are recovering?

The Witness: Yes, sir.

The Court: Why is that?

The Witness: On account of the natural increase, and furthermore, due to the fact that the subway is practically saturated during the rush hours.

By Mr. LaMotte:

Q. That effect was not reflected in the Third
2088 Avenue station at 42nd Street; that went up and went back. The 6th Avenue went up, all the stations continued up? A. The 6th Avenue was not in direct competition with the—

Q. But the Third Avenue station, that went down the first year, and then went back to 3,683,000 in 1923? A. Yes, the spur station went back in 1923. The spur station was affected more direct by this competition.

Q. Let us take it right there: On the 3rd Avenue L line, there were 3,020,666 ticket sales in 1919. That was more than there were in 1918 although the Lexington Avenue had been opened. In 1920,

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there were 3,339,000, nearly 300,000 more, and in 1921 there were 600,000 more, and it was only in 1922, that is four years after the Lexington Avenue was opened, that there was a slight decrease; then it came back higher than ever, 3,683,000; so the opening of the Lexington Avenue did not show a decline there, if these figures are correct? A. It shows a decline as you just read from your own figures; 1918 and 1919 show as compared with 1917—I have not studied these figures—

Q. You say the Lexington Avenue was opened in the fall of 1918? A. August 1st, 1918.

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Q. If the ticket sales there were in 1918, 2,833,176, and in 1919, 3,020,666, there wasn't any going back there, but an increase of over 200,000? A. 3rd Avenue elevated at 42nd Street?

The Court: Yes.

Q. It increased every year, except that the only decrease was in 1923, and that seems to have been general, all along the stations? A. This does not show any decrease in 1923; it shows in excess of 1922. It also shows that the spur picked up in 1923 against 1922. You take 42nd Street, the picking up of 42nd Street; you have had, as I testified before, a tremendous business improvement around there. It is only natural.

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Q. But notwithstanding this tremendous improvement, and the fact that the traffic on every station on 6th Avenue enormously increased, the spur declined gradually until 1923 when you installed the turnstiles? A. This does not show that every station on 6th Avenue increased and every station on 6th Avenue did not increase.

Q. I mean on 42nd Street? A. Oh, on 42nd Street, yes.

2092 *Claimants' Witness—George Keegan—Redirect.*

Redirect examination by Mr. Nichols:

Q. About the spur at 42nd Street, Mr. Bauer's chart, Exhibit 43, shows, as you said, the enormous increase in traffic developed at 42nd Street, but has any station at 42nd Street or anywhere else, been so surrounded by immediate competition in the way of other stations, rapid transit stations, as this spur is surrounded? Now, the entrances to the subway are all around it, in the Pershing Square Building, the Bowery Savings Bank Building, and the Lincoln Trust Company and the Belmont Hotel and the Vanderbilt and the Commodore Hotels, and going from the New York Central Station, and the Biltmore and the Yale Club and the Queensboro subway entrances—I have only mentioned some of them, but around that spur station in every direction, they put a ring of entrances? A. Yes.

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Q. Nothing like it in the City? A. No.

Q. And they have two tubes in 42nd Street, the Queensboro and the crosstown, and I ask you the question, haven't they just about exhausted the possibilities of competition as far as station entrances around that spur have gone?

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Mr. LaMotte: Objected to as calling for a conclusion and speculative.

The Court: Objection overruled.

Mr. LaMotte: Exception.

A. I testified that we are up to capacity in the subway, and the subway is the only rapid transit line running north and south at that point, therefore, if they use a rapid transit line north and south of 42nd Street, they have to use the elevated line.

Mr. LaMotte: I move to strike that out as a conclusion and speculation pure and simple.

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The Court: All you can do is to state the conditions, and what the facts are.

Q. You have stated the conditions—

The Court: He says the subway has reached its capacity.

Mr. LaMotte: I say that anything else he says is pure conclusion.

The Court: And he says that the only other competing line with it is this 3rd Avenue L, and it is to be inferred that if they want to go uptown on a long trip, they have got to take the L.

Cross examination by Mr. Page:

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Q. Mr. Keegan, do I understand from your testimony that when there shall be four stairways at 42nd Street and 3rd Avenue, and the platforms increased as required by the plans of the Transit Commissioners, with which you are familiar, that there will be no additional increase in the number of passengers who use the elevated at 42nd Street and Third Avenue? A. I do not think there will be any increase over the present conditions.

Mr. Page: I would like to make a suggestion, Mr. Nichols, that as his Honor viewed this in the first instance, that it might be, with the concurrence and suggestion of counsel, that with these revised plans which picturize these four stairways, soon to be necessarily installed, your Honor pass along there some morning at nine o'clock and reach a conclusion himself upon this physical evidence of the situation, as to whether he concurs or not with the witness now on the stand.

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The Court: I have already viewed the conditions as they were in September last.

Mr. Page: But not since they were taken down. You will find one spillway there—the stairway at

2098 42nd Street on the west side, when the passengers are thronging down and mounting up, resembles a spillway in a millstream, in both directions at the same time, and my suggestion is that the Court now that it is done, look at this one stairway and make up his own mind as to whether, when you put another on the other side of the street, on the west side, with the increased capacity of intake and outgo, there won't be presumably a larger number of passengers using the spur than ever before.

2099 Mr. Nichols: My friend strenuously contested before the Commission, that it was not necessary, when this very order was made.

Mr. LaMotte: Mr. Reeves, a witness for the railroad, testified that he thought all passengers would go over, and Mr. Brackenridge was called, and he said, even if they all went there, this present stairway might accomodate them. But the Commission did not agree with them, and they authorized or directed that these additional stairways be built.

The Court: I am inclined to think myself that it would help some. If passengers had four stair-

2100 ways to use, instead of two, they would be more apt to use them.

Mr. Nichols: I feel myself that any additional convenience would help.

By Mr. Nichols:

Q. Can we put that stairway in until the contractor removes that Bent No. 2? A. That is an engineering problem I cannot answer.

Q. We will put it in as quick as we can? A. The work is going ahead.

Mr. Nichols: Mr. LaMotte said he would like to have our chart relating to Third Avenue, No.

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K-3, continued back to an earlier period than it was—back to 1900 and we have done that for him. I handed it to him this morning, also a sworn statement giving the figures upon which the witness said his chart had been based.

Mr. LaMotte: I asked him why he didn't do it; I did not ask him for it, but I don't care—put this in. I don't know anything about it.

The Court: It appears upon the record that it is in court and is available.

Mr. LaMotte: It does not make any difference whether it is in or not.

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WILLIAM F. REEVES, recalled for further examination, testified as follows:

Redirect examination by Mr. Nichols:

Q. Just to complete our records, will you state briefly the mileage of the elevated lines that have just been described by Mr. Keegan, and the subway lines?

The Court: What is this—repetition of what the other witness said?

A. The track mileage, the track miles for the Manhattan System is 130.19, and for the so-called I. R. T. extension, 10.32, making total track mileage of 140,51. Now, for the I. R. T. subways we have an additional mileage, track miles, 140.83, and for the elevated or viaduct system attached to the subways, 93.03, making a total track mileage for the subway division of 233.85. Now, the structure mileage for the Manhattan system, in connection with the I. R. T. and extensions, 41.88, and for the subways, tunnel and viaduct structures combined, 73.04.

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2104 *Claimants' Witness—William F. Reeves—Recross.*

Recross examination by Mr. LaMotte:

Q. What is the track mileage on the spur that is in condemnation here—how many tracks are there? A. I think 18/100ths of a mile of structure; I have forgotten the track mileage.

Q. There are two tracks? A. Two tracks and some switches.

Q. Now, take the two tracks? A. I think .41 is the track mileage if I recollect rightly.

Q. When you speak of track mileage, speaking of totals, did you include all the switches? A.
2105 Everything, all tracks which trains are operated on.

Q. Suppose you had a switch connecting the uptown track to the downtown, merely for the purpose of crossing over, would you call that track mileage? A. Surely, so many miles of track.

Q. How many miles were there in the whole elevated system? A. 130.19 for the Manhattan system and the I. R. T. extensions 10.32, making a total of 140.51.

Q. That is the elevated systems? A. Elevated systems with their extensions.

2106 The track mileage on the spur was .04 you say? A. No, I said the structure mileage was .18 and the track mileage my recollection is, .41.

Q. That would be what percentage of the entire track mileage, if your figures are correct? A. A very small percentage.

The Court: That is a matter of computation.

Mr. Nichols: If there is no objection, I will offer in evidence a map entitled "Routes of the Interborough Rapid Transit Company."

Mr. LaMotte: That shows the system now in operation?

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Mr. Nichols: Yes, as maintained and operated—

Mr. LaMotte: Does it show the spur?

Mr. Nichols: No, it is not here.

(Admitted in evidence and marked Claimants' Exhibit O.)

JOHN BAUER, recalled for further examination, testified as follows:

Direct examination (continued) by Mr. LaMotte:

Q. Now, Dr. Bauer, in the question which I asked you as to the value of this spur, it appears from the records here, that I omitted this: "And the right to operate cars or trains thereon and thereover." If that sentence were added to that sentence, would your answer be the same? A. Yes.

2108

Q. Have you had prepared the statement of ticket sales on the 42nd Street station of the 3rd Avenue Line, Manhattan Railway Company, for the years 1919 to 1924, both inclusive, including ticket sales up to April and including April, 1924? A. I have.

Q. You have not got the records for May, have you? A. No, I have not.

Mr. LaMotte: I offer this in evidence.

2109

(Admitted in evidence and marked City's Exhibit 50.)

Q. Have you also prepared a statement showing the ticket sales at the Grand Central Station of the elevated division for the fiscal year ending June 30th,—these figures on the paper just offered in evidence are for the fiscal year ending June 30, or for the full year? A. I believe fiscal year; I have not a copy of it before me—yes, they are for fiscal years.

Q. Have you made a statement of the ticket sales,

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6th Avenue and 42nd Street, for the years 1922, 1923 and 1924 up to April? A. Yes.

Q. Both north and southbound? A. Yes.

Mr. LaMotte: I offer that in evidence.

(Admitted in evidence and marked City's Exhibit 51.)

Q. Have you made a statement of the ticket sales for the 23rd Street station of the 3rd Avenue elevated? A. I have.

Q. For the years 1922, 1923 and including April, 1924, both north and southbound? A. Yes.

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Mr. LaMotte: I offer that in evidence.

(Admitted in evidence and marked City's Exhibit 52.)

Q. Have you made a statement of the ticket sales of Second Avenue and 42nd Street, of the elevated, for the years 1922, 1923 and 1924, up to and including April? A. Yes.

Mr. LaMotte: I offer that in evidence.

(Admitted in evidence and marked City's Exhibit 53.)

Q. Have you made a statement of the ticket sales for the 34th Street station on the 3rd Avenue Line for the same years, 1922, 1923 and up to April,

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1924? A. I have.

Mr. LaMotte: I offer it in evidence.

(Admitted in evidence and marked City's Exhibit 54.)

Q. Have you made a statement of the sales on the Grand Central subway station at 42nd Street for the years 1922, 1923 and up to 1924? A. Yes.

Mr. LaMotte: I offer it in evidence.

(Admitted in evidence and marked City's Exhibit 55.)

Q. And a similar one at the subway at Times Square? A. Yes, sir.

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Mr. LaMotte: I offer it in evidence.

(Admitted in evidence and marked City's Exhibit 56.)

Q. Have you prepared the monthly ticket sales of the Grand Central Station of the elevated railroad for the fiscal year ending June 30, 1923, to 1924? A. Yes.

Mr. LaMotte: I offer it in evidence.

(Admitted in evidence and marked City's Exhibit 57.)

Cross examination by Mr. Nichols:

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Q. Doctor, up to 1919, you were engaged in what Mr. LaMotte calls "academic work," as instructor and assistant supervisor, and as assistant editor of a periodical called the Economical Bulletin? A. At different times during the period, yes.

Q. And during that time you were employed by the Corporation Counsel, were you not? A. During that time?

Q. Yes, that is from June, 1914, to October, 1916, you testified that you were employed as statistician during that period for the Public Service Commission, State of New York, First Department? A. What is the period you mentioned?

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Q. As I understood it, that was 1914 and 1916 that you were statistician? A. Yes, that is approximately correct.

Q. What was the period when you were employed by the Corporation Counsel as an expert statistician and accountant? A. I have been employed by the Corporation Counsel in various financial litigations since, I believe, about November and December, 1919.

Q. Is it correct that you were appointed, as you

2116 testified, to that position as statistician with the Corporation Counsel? A. No, sir.

Q. How much work have you done for the Corporation Counsel since then? A. Quite a good deal.

Q. Well, I want you to be more definite than you have been about the spur. A. The question is pretty general, Mr. Nichols.

Q. Don't you know when you were employed by the Corporation Counsel, for whom you are appearing now? A. I have been employed in various

2117 litigations conducted by the Corporation Counsel, I stated earlier, in response to question, since November, 1919. That of course, is not this case; in other cases for the Corporation Counsel.

Q. Can you remember when you were employed in the other cases? A. I don't understand—I don't know what your question is.

Q. I am asking about your employment by the Corporation Counsel. A. My appointment?

Q. Employment by the Corporation Counsel. A. What is your question?

Q. I asked when, under what circumstances.

2118 The Court: When did you first begin, and what work have you done?

The Witness: I have answered twice that I began work with the Corporation Counsel approximately, November, 1919, and since that time I have been employed in a number of cases and special investigations made by the Corporation Counsel. Now, if you ask specific questions, I will answer.

Q. As you are not more definite in your reply, I will ask you how long you were assistant editor of the Economic Review? A. I was not assistant editor of the Economic Review, the Economic Bulletin.

2119

Q. That is right; Economic Bulletin is correct? A. I don't recall exactly—a period of perhaps three years.

Q. You went over a large proportion of their financial literature, as assistant editor? A. I did.

Q. Where was that periodical published? A. It was edited from Ithaca, New York; it was printed, I believe, at that time, by the Princeton Press, from Princeton, New Jersey.

Q. You stated you did not remember where it was printed—where it was published, that is, the practical side of it? A. And it was put out under 2120
the authority of the American Economic Association.

Q. I asked you the question whether you knew where it was published?

The Court: In New York or Ithaca or where?

The Witness: I believe it was printed at Princeton, New Jersey, from the Princeton University Press.

Q. You think so? A. That is my recollection of it. It is a number of years ago.

Q. Now, you testified that the earnings of the spur—you testified to the earnings of the spur before the Transit Commission, or rather the Service 2121
Commission, in 1921. What did you then testify were the gross earnings of the spur? A. You mean before the investigation—before the Public Service Commission?

Q. Not the investigation, the hearing to determine what you say was whether the spur was a public necessity or not, as a utility? A. I have not the record before me at this time, what it was. It was probably very close to my computation now, but I have not the record before me.

Q. Just how close, Doctor? A. If you give me the record, I will tell you.

2122 Q. You testified—I am asking now about the gross revenue. Now, gross revenue is the basis of the most readily determined factor in coming to the ultimate question of net railroad earnings, is it not—the gross earnings? A. Well, in part that is so; in part it is not.

Q. It is relatively easy and definite of determination, as compared with the net, is it not? A. The difficulty, Mr. Nichols with that is, that to come to the gross earnings of the spur, you have to make an allocation, and to make an allocation—

2123 Q. I just want to get to this question of the gross earnings. If you don't get your gross earnings, you are not likely to get the net earnings correctly, are you? A. That is very correct.

Q. How did you get at the gross earnings in your testimony before the Commission in 1920 or 1921? You have testified to gross earnings in the same year, in the year 1920, then, as you do now? A. I believe I did, but it is a long time since I went over these computations; I cannot attempt to recall accurately. My best memory is in general that I made two groups of computations, one based on

2124 one line of assumptions, and another based on another line of assumptions, and I think one of the lines was practically about the same as the computation that I put in at the present time.

Q. Did you, by one of these computations, get, as the total revenue of the spur, $4,576 for the year 1920? A. I don't recall. If you are reading that from my statement—

Q. From page 178 of the record before the Transit Commission? A. That does not help me any. I assume so.

Q. Would you like to see the record? A. If you say that is what I say, well and good.

2125

Q. And that was based—I am referring again to page 178—that based upon gross revenue, page 178, the middle of the page— A. What page?

Q. On page 178 of your record before the Transit Commission? A. Yes, I have page 178.

Q. Now, you had gross earnings there of $152,543? A. Yes, I have it.

Q. That is what you said the gross earnings at that time, 1920, were—$152,543? A. Yes.

Q. And in this trial, you have estimated the gross earnings of the same year at $211,195.40? A. That is correct.

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Q. And you say you have refreshed your recollection and you do not recall the methods you adopted at that time in testifying to removing this public necessity? A. I believe I can give you practically the difference in the procedure of the computation.

Q. We will come to that. Why is this difference of $152,000 then and the $211,000 now as gross earnings of the spur? A. Those gross earnings are gross earnings in the sense of total receipts collected from all the passengers whether allocated to the spur or the 3rd Avenue line. It is the total

2127

amount of the nickels collected from all the passengers that traveled on the spur, gross in that sense.

Q. Now, at that time you did not use the 6½ per cent. at all, did you? A. I did not, no, sir.

Q. You did not even recognize the fact, although it was in evidence, just as the 6½ per cent. was, that there was a larger traffic west than east? A. I don't believe it is in evidence, Mr. Nichols. If I recollect, I did not make a difference in the volume of traffic east-going and west-going, that is correct, but I do not believe the fact was in

2128 evidence, nor was the other fact in evidence, and that I am very sure of, that the ticket dropping was greater than the ticket sales. That I am very certain was not in evidence at that time. The other, I am not certain about.

Q. Wasn't the man who preceded you in the testimony before the Transit Commission, a man named James E. Ryan? Do you recall Mr. Ryan's testimony, who preceded you, as to the postal card canvass, that you found out about the relative length of haul? A. I remember Mr. Ryan, and I

2129 remember that he put in testimony.

Q. And looking at page 163 of the record before the Public Service Commission, you find that Mr. Ryan butted in in the course of your testimony, to give these facts showing the greater amount of westbound over the eastbound traffic, and you say it was not in the evidence, and you did not know it. Now, just look at that? A. On page 163? Am I right?

Q. Yes, page 163. You will find at the top of the page that you were testifying, and then this same Mr. Ryan comes in on behalf of the Corporation Counsel, associated with you in getting rid of

2130 this free transfer for The City of New York? A. Yes, what next?

Q. Now, will you look along on page 164, and you will find that he gives the traffic there according to this card canvass, and says 123 people say they will continue to use the spur, and 200 say they will not. That is down at the bottom of page 164? A. Yes, I see that.

Q. Do you recall that card canvass? You will see at the top of the page that there were 5,000 cards sent out? A. Yes.

Q. That is the canvass on which you have based,

on those card returns, the distances which the spur travel was used as the basis of your computation? A. That is the computation made at that time, that is correct. 2131

Q. Now, you recall it sufficiently to get those figures as to the distances the spur travelers were supposed to travel on the Third Avenue line, but you do not recall there was any evidence in the case to show there were more passengers going west than going east? A. I do not see in these pages you mention here, any such evidence. I fail to see in the pages of Mr. Ryan's testimony any such reference, that there were more going west than were going east. If you will point out to me where that is, of course I will frankly recognize it, but it is not there. 2132

Q. As statistician and economist, not a practical railroad man, did it ever occur to you in giving your testimony relating to this $152,000 gross, that perhaps more passengers were going west than going east? You say you did not testify to that? A. I believe, if you go back over my record and testimony in the case previously, you will see that I made adequate allowance for the fact that there were uncertainties and broad guesses that had to be made. 2133

Q. Yes, Doctor, broad guess, but I am getting down to this question: Did you or did you not found your gross revenue from the spur, to which you testified before the Transit Commission, upon the ticket sales, and the ticket sales alone? A. At that time, that is what I—

Q. You did? A. Yes.

Q. Did you ignore the fact that the ticket sales there are a wholly inadequate measure of the traffic on the spur, but the fact that these distances

2134 that you took from this count of Ryan, about the six miles north and the two miles south, which you have now got into this record as an average haul, were taken altogether on a count that only took the westbound passengers? A. It would not make any difference whether you took west or eastbound for that purpose.

Q. Let us get down to that fact because, you see, we have to run a railroad and be practical, not economists? A. That is unfortunate for you.

Q. Do you realize that the people that come
2135 down from the north are the large proportion of those that travel on the spur? A. I do.

Q. Now, that is in the evidence at the very page that I showed you, is it not? I told you to look down at the bottom of the page and you would see that right there, interrupting you, Ryan was brought in to testify to that exact question, as to those going north and those going south, so there is no doubt about that. Now, those coming from the north, come from a line which extends up how far to the north? A. That I have forgotten; perhaps six miles further up.

2136 The Court: Wasn't this in your testimony a day or two ago?

The Witness: No, not in mine.

Q. You know this Third Avenue line goes up more than six miles to the north of 42nd Street? A. The average haul, if I recall it—

Q. No, answer the question? A. I don't know what the length of the line is.

Q. You don't know what the length of the line is? Don't you know that it goes up to 243rd Street, just at the Yonkers Line, don't you know that? A. Yes, and I don't know what the distance is.

Q. Then the way you tried to get the distance

2137

was to rely upon a count that took in only the people coming from the east to the west? A. What I tried to get was the average distance of the people going, and not the distance of the line.

Q. Now, you say there are people going west, that is coming in preponderating numbers from the north, because all they had to do was to walk across the platform at the same level at Third Avenue and 42nd Street, and then take the spur. Now, that is a practical thing? A. Yes.

Q. And you say that accounts for the difference in the east and west traffic? A. It is one of the elements that accounts for it.

2138

Q. Now, going the other way, south, they walk up the stairs at the spur station, and go over to Third Avenue, and climb up over the express track, and climb over the track in the middle, and come down on the other side before they can take the southbound, isn't that right? A. Yes.

Q. Your proportion is 160 to 100, using the northbound, that is going west. Now, why didn't you have a count taken to determine the distance travelled by the traffic going east, where the preponderance would be the people stepping across the platform and going down the short haul? A. You are talking now about the exhibit that I have in this case, or the figures that I used before the Commission?

2139

Q. I am talking about the figures that were used before—one of the sets of figures—you had two methods, didn't you? A. I believe so.

Q. In both of those, you adopted this $152,000, based flatly upon the ticket sales and nothing else? A. I think I did, but I don't recall; I have not the statements before me, I think so.

Q. You can take the ticket sales as you have

2140 them, and multiply them by five, and you will get that figure. Now, it is true that you got your average distance travelled on the Third Avenue line, from taking a count which was taken only of the westbound passengers? A. Well, I don't know. I took that computation from tabulations and computations made by Mr. Ryan. Mr. Ryan made that count, tabulated the amount and multiplied the number of passengers by the distance travelled, and I took the results from him, and I don't know what specifically he took.

2141 Q. How did you get at your present calculation, if you took what somebody else handed to you, and you did not ask how he got it? Is that how you got up your calculation? A. Of course, that is not so either. At the time I was then roughly conversant with what was done and what was not. I don't recall now what was contained in it. For the present I know very definitely what was done; I took my results—

The Court: How much is there of his examination on that previous hearing?

Mr. Nichols: It will take some time.

2142 The Court: How long will it take him to read it, so as to become familiar with it?

Mr. Nichols: I suppose he could read it in about 15 minutes.

The Court: Then let him read it, and not waste any more time.

Q. Do you want to refresh your recollection by looking at it? A. As a matter of fact, my testimony was scattered through a number of parts of this, and based upon exhibits in the case. It will take me several hours to go through, and recollect it, so that I know just what I am doing.

The Court: I think in the end, we will save

2143

time by taking an adjournment and letting him read it.

Mr. Nichols: I would like to do that, and have him do that.

Q. Now, in the present case, Doctor, did you testify that you testified before the Public Service Commission of the State of New York, in a proceeding to determine whether the spur was a necessary public utility—that is your idea of it, is it? A. Would you repeat that?

Q. Did you testify in this trial the other day, in answer to Mr. LaMotte's question, that you had 2144
testified in a hearing before the Transit Commission to determine whether the spur was a necessary public utility? A. I did testify before the Commission.

Q. Are you aware, Doctor, that under the bill which the Borough President Miller drew up—you know that, that was testified at the hearing by Mr. Schafer—that the purpose of this whole proceeding was to relieve the street from such a congestion, was it not? A. I do not recall that.

Mr. LaMotte: I object to that.

The Court: If he knows it, I will allow it. (To 2145
witness.) Do you know the purpose of the bill?

The Witness: No, I do not recollect.

Q. You do know about the traffic conditions upon the surface at 42nd Street? A. Generally, yes.

Q. They have to do with this very question of transit that we are considering now? A. Yes.

Q. Do you know that Mr. Schafer, representing the Borough President, testified that the purpose of the proceeding was to free 42nd Street from congestion?

Mr. LaMotte: Objected to as incompetent, ir-

2146 relevant and immaterial; the inquiry here is what your property is worth.

The Court: This is cross examination.

Exception by Mr. LaMotte.

Q. Do you know that? A. I believe that is so.

Q. And Borough President Miller has been engaged in that, and in other very conspicuous efforts, including the removal of the columns from the 6th Avenue elevated road, for the purpose of relieving the traffic congestion in New York City, is that it?

2147 The Court: What difference does it make what the President of the Borough was interested in?

Mr. Nichols: I want to show that the Borough President drafted this bill, and put it through, as his engineer testified before, as a public improvement, to relieve congestion in the street, because of the extreme conditions there. The necessity was quite different from getting rid of the transit facilities no longer needed.

Q. Are you familiar with the physical conditions there, where the spur used to be? A. Yes, generally speaking.

2148 Q. You have a very interesting table which shows that the traffic on 42nd Street has developed since 1900, some 1456 per cent. or something like that? A. Yes, larger than that.

Q. An enormous increase there? A. Yes.

Q. It increased doubly in the last seven years—something like that? A. Well, I guess so.

Q. Now, the vehicular traffic in this crosstown street, is that one of the most serious problems in the street congestion in this city? Has that been increasing like the passengers that you have shown to increase?

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Mr. LaMotte: Objected to; he is not called upon to pass judgment on the street traffic.

The Court: He is inquiring, I take it, whether one of the reasons for condemning this property was because of the congestion, or to get rid of it because it was no longer necessary. Objection overruled.

Mr. LaMotte: Exception.

Q. That is so, that there has been great congestion, growing very rapidly in 42nd Street? A. My knowledge, Mr. Nichols, is only what any citizen has about that, though I think there is growing

2150

vehicular congestion, but I have never studied it, and never made any comparisons of it. I have not made at any time any statistical or other counts that gave me a basis of comparing vehicular traffic at one time with another, as I have studied the rapid transit traffic, so my impression is only a very general one, that anyone who has gone through that section again and again would have.

Q. You do not recall the testimony before the Transit Commission upon that point, do you—or do you? A. Not definitely enough to quote it.

Q. You did testify as to the value of this spur;

2151

you said it was worth only junk. Before that testimony, did you examine the spur to know what the physical conditions in the streets were? A. I testified to that from an analysis of its own traffic, traffic history and earnings, and not from the standpoint of street congestion.

Q. You know that the columns are 7.10 feet from the curbstone, don't you? A. That may be right; I don't know.

Q. And that there are street trolley tracks in the center of the street? A. Yes, I believe I know that.

Q. And at the free space between the trolley

2152 tracks on one side is 11 feet and on the other side it runs from 9 feet 4 to 11.2. I am quoting the City's figure, testified to by Ryan, who was there with you in that case? A. I don't know what the measurements are.

Q. I want to test your powers of observation in practical matters. Now, is there in your opinion, in view of the street car tracks, supposing they were occupied by street cars, room for more than one line of vehicular traffic?

Mr. LaMotte: Objected to; he is not here as a
2153 street traffic expert, and has not qualified as such.

The Court: I will receive it.

Mr. LaMotte: Exception.

A. I don't suppose there is more room than for one line of cars.

Q. And to the north of 42nd Street at this point is the Grand Central Station, cutting off all the east and west crosstown streets, and to the south, across 41st Street on the south, is Bryant Park, leaving 42nd Street the only through street in this great commercial center of the city, between 40th Street on the south and 46th Street on the north, is
2154 that right? A. 42nd Street is the only through street between what ranges?

Q. (Question read.) A. I think that is right.

Q. Will you correct the impression or statement that you have made or given, that this proceeding before the Transit Commission was solely for the purpose of determining whether the spur as a traffic utility was no longer necessary for the public convenience?

The Court: What is your understanding of it?

The Witness: I don't understand what Mr. Nichols asks me to do.

The Court: What is your understanding of the

2155

purpose of the hearing before the Public Service Commission, as to the necessity or advisability of removing this structure?

The Witness: If I recall the statement, it involved two things; one of them, to determine whether it was still a convenience and necessity, and the other whether or not it was an obstruction to traffic. That is not the terms used, but it amounts to that; there were two elements involved.

Q. There were two methods used in your determination before the Transit Commission, you stated, as to traffic. Do you recall that one of those methods, you took ten per cent. of the gross you arrived at on the basis of ticket sales alone, and allocated that to the spur? A. I believe that one of the methods assumed a ten per cent. allocation.

2156

Q. You assumed that? A. I believe that there was assumed for the purposes of one of the computations, a ten per cent. allocation.

Q. You say it was on the basis of an assumption of ten per cent. Where did you get your ten per cent. from? A. I do not recall definitely enough to answer absolutely, but my general recollection is—Mr. Nichols, time would be saved if I could go over this record, because it is just futile to go over this in this way.

2157

(Whereupon an adjournment was taken to Tuesday, June 10, 1924, at 10 o'clock A. M.)

New York, June 10th, 1924.

TRIAL RESUMED.

Continuation of the cross examination of JOHN BAUER.

By Mr. Nichols:

Q. Doctor, have you had an opportunity to read

2158 over your testimony before the Transit Commission as to the financial results of the operation of the spur, as the Court directed yesterday? A. I have.

Q. And the rest of your testimony? A. Yes, I went over casually the rest of it, but it was too much to study very closely.

Q. Casually? A. Yes.

Q. Did you read the first sentence, Doctor, on page 163, where the corporation counsel, Mr. Devery, asked you, "Mr. Bauer, you are an expert
2159 statistician and accountant in the office of the Corporation Counsel?" And you answered, "Appointed by the Corporation Counsel." Is that correct? A. Well, yes, that is correct, I was appointed by the Corporation Counsel to do the work in that matter.

Q. In that matter only? A. In that matter, and in other matters that I was employed for.

Q. I call your attention to the form of the question of the Corporation Counsel, "You are an expert statistician in the office of the Corporation Counsel?" Were you in the office or did you have
2160 an office of your own? A. I have an office in the Corporation Counsel's office and I have an office of my own.

Q. Now, at that time, Doctor, towards the end of your testimony at page 291—you have a copy there, haven't you? A. Page 291?

Q. Yes, 291, at the bottom of the page? A. Just give me time to find it.

Q. I will read it to you:

"Q. You are an expert on what, Mr. Bauer? Do you know anything about traffic? Is that what you are testifying about?

2161

"*By Mr. Devery*:

"Q. Tell him what you know about traffic. A. Oh, Mr. Corporation Counsel, I cannot tell him what I know about the traffic."

Is that true? A. Yes, that is true in the sense that it was meant.

Q. Throughout your testimony as a statistician, you relied solely upon the sales of the tickets as the only basis available for the determining what the traffic was and the gross revenue, is that right? A. No, that is not right, Mr. Nichols.

2162

Q. It is not right? A. No. If I might be permitted—

Q. No, I guess you better answer my questions? A. Very well.

Q. You will have an opportunity later. In the first place, in view of your testimony yesterday that I had not called your attention to anything before the Transit Commission showing there were actual counts made of the traffic east and west, do you remember that at that time your attention was called to the count by the City and that of the Corporation Counsel in response to my suggestion—I mean the commission, that Commissioner Barrett at page 282 said that there should be a thorough count, said that he had not made a count on behalf of the commission? A. That is subsequent to my computation. At the time of my computation being put in in that proceeding—

2163

Q. But you testified throughout that hearing on several days and subsequent to the actual facts having been put in as to the east and westbound traffic? A. However, my computation was made before that time and was put in before that time and you were cross examining me before that time.

2164 Q. After the fact had been brought out that the east and west sales showed a disparity in volume of traffic, substantially 300 per cent. of the ticket sales, you were asked, "You based your entire calculations upon the supposed loss to the Interborough Rapid Transit Company involving an operation of that spur, on the basis of the tickets actually sold, and did not try to find out any of the real facts in the case at all, is that the idea?" A. From what page did you read?

Q. Page 273, later on, after the facts were de-
2165 veloped? A. In the first place, that fact was never developed at that time, that the traffic was 300 per cent., and in the second place I was not asked to make a new computation.

Q. You did not make after you knew there was that disparity? A. I was not asked to make it.

Q. We will first find out whether you then took the position that the ticket sales were not fully conclusive and sufficient. Do you remember that my question was based upon the fact that the sole basis that you relied upon was the ticket sales? Look down at the bottom of that page. A. What
2166 page?

Q. Page 273 of the record:

"*By Mr. Nichols*:

"Q. I do not care anything about your calculation. What I do care about is the inaccuracy or accuracy upon which the basis was made. The basis is the ticket sales. A. The basis is the ticket sales.

"Q. And if the ticket sales did not show the traffic, your whole conclusions are worthless."

You then pointed out that there was discrepancy of at least 50 per cent. in the actual traffic from

what was shown by the ticket sales alone, and you were asked: 2167

"Q. That is it; 50 per cent. does not make any difference to you? A. It does not in these figures."

A. Of course you have omitted a great deal there that ought to be put in.

Q. I want to know whether you testified that way or not. What is your answer, did you or did you not so testify? A. I so testified within the explanations that were made all along the record. My second computation was ten per cent. of the gross collected from the passengers and ten per 2168 cent.—

Q. Confine yourself to answering. I will come to the ten per cent. later on. A. The answer was made within the limits of that allowance.

Q. You did use the ticket sales? A. I used the ticket sales, yes, sir.

Q. And you didn't use anything else? A. I allowed the ten per cent. because of the inaccuracy.

Q. You did not use anything else as the basis of the traffic, yes or no?

Mr. LaMotte: I object to the witness being bulldozed. He is putting answers into his mouth. He 2169 should be permitted to answer.

Mr. Nichols: I am trying to get an answer.

The Court: Objection overruled. If you cannot answer yes or no, say so.

A. I cannot answer the question in that form.

Q. Let us turn back from the point at which I started there to page 266. Will that refresh your recollection as to whether the actual facts, the count, east and west, was then in evidence? At the bottom of the page, Doctor:

"Q. Were you here when the testimony was given showing that the actual traffic on the 42nd

2170 Street spur was 298 per cent. of that indicated by the sale of the tickets, approximately three times the sale of tickets, at the spur station? A. I do not believe I have any ground for challenging or accepting that. That is your testimony, and I am not here to challenge it."

You knew that evidence was in and you knew that the Transit Commission had a count, and that the City had a count? A. I do not believe that those figures were in the form of proof, and I had made my computation before, and placed my evi-

2171 dence in before. This is all subsequent to my statement going in.

Q. And you did not correct your statements after you knew that? A. I was not asked to, there was no opportunity to do it.

Q. That was at page 266, Mr. Bauer. Were you not recalled at the end of the hearing, at page 569, to give further testimony? A. I am not certain as to the exact point. I was called back subsequently, but not on that phase.

Q. And you were not called upon that phase. So after having had your attention called to the

2172 fact of this vast discrepancy between the actual traffic on the spur, and the ticket sales on which you relied, when subsequently recalled at the end of this exhaustive hearing, several days afterwards,—you can look it up if you choose, it is page 569—you then testified on this question of traffic, and you did not at that time put in any correction of your former estimate of the supposed loss to the Interborough Company in the operation of this spur, based solely upon the ticket sales, is that true or not? A. I did not. I had already adequately allowed for it.

Q. Allowed for what? A. For that element.

2173

Q. How did you allow for it? A. Through the ten per cent. allowance that I made, which was purposely taken to cover any elements or factors that at the time of my calculation had not been sufficiently definitely determined.

Q. Now, Doctor, you say you allowed for it. You testified just now that you did not know what it was. How could you allow for something if you did not know what it was? A. For that reason I took ten per cent., when the available counts at the time showed two and one-half per cent., and in my first computation I used three per cent. In order to allow for all of those elements of uncertainty that I admitted and stated in my first appearance before the Commission, I allowed ten per cent. so as to cover and provide for all those factors.

2174

Q. Elements of uncertainty, doctor? Didn't you say in regard to ticket sales at page 187 that a business man would be very lucky to have such an exact and final basis of calculation as the ticket sales? There wasn't any uncertainty about that part of it? A. I made that statement, but the statement was made in reply to a question that went outside of the particular issue.

2175

Q. You volunteered the statement then, when you did not even have to make it, that the ticket sales were so conclusive, as you expressed it, that a business man would be very lucky to have such a basis of determining the exact volume of his business? A. I still would make that same statement for the same question, that in a study of earning power in an outside business, the relative degree of accuracy that I had in those ticket sales would be of greater accuracy that would ordinarily be obtained in such an outside investigation.

2176 Q. You say, at page 187, that this is just the way that you would determine the value of the traffic of the spur, that is, by the ticket sales, if the spur was to be built. You know, doctor, that on any calculation that you have made the spur never could be profitable, isn't that so? A. At that time—

Q. At any time. A. At that time when I computed, the spur would not have been built. I made no computation at the beginning—

Q. Now, the gross revenue of the spur would have to be, on your computation, some $700,000 to
2177 make it pay, wouldn't it, or haven't you attempted to figure that out? A. You mean the gross revenues collected from all the spur passengers?

Q. Yes, the gross revenue? A. Yes, that is correct, about. That is about right.

Q. Could you just figure out, doctor, on any of your several bases of calculations, how much the traffic would have to be on that spur to make it pay, to warrant, as you testified before the Commission at page 187, the accuracy of your theory that your method is exactly the one on which a railroad would determine whether to build a spur or not? A. On the basis of the figures that were
2178 put in this proceeding, the gross revenue would have to be about $700,000 before the spur would pay.

Q. And therefore, it would be very foolish to have constructed that spur? A. Under present conditions, decidedly.

Q. Under any conditions? A. No, this $700,000 is based upon present conditions and present computation of costs.

Q. Now, at page 187, this is your answer, questioning the accuracy and sufficiency of a purely ticket sale basis, "I imagine that if at the present

time you proposed to erect that spur, that a practical railroad man would use exactly those methods. 2179

"Q. Well, you use the basis of the traffic on the ticket sales, don't you? A. Exactly.

"Q. Now, do you suppose that that actually represents the actual traffic on this spur? A. It does, probably so closely that it can be used in our computation.

"Q. Oh, you think the business men that have to run railroads would rest for a moment upon any such method as the computation of the ticket sales? A. They would be lucky to have such definite data." 2180

Have I correctly read your testimony? A. You have.

Q. You testified later on in the case as to the difference between the actual proportion of the traffic, which, according to your computation based upon the card canvass, was 2½ per cent. as against 97 per cent. allocated to the spur. How much did you really allocate to the spur? A. In one of my computations I allocated 3 per cent., while the postal card canvass showed 2½ per cent., and in the second allocation I allocated ten per cent. to cover those indefinite factors. 2181

Q. Over on the next page, page 571—we are addressing ourselves now to what you call the actual ratio as against your assumed ratio, the 2½ per cent. shown by a certain count you relied upon as against 4 per cent. as shown by the Interborough Count, three per cent. assumed in one of your calculations assumed before the Commission, ten per cent. assumed before your other calculation before the Commission, and five per cent. assumed in this trial— A. What is that page?

2182 Q. Page 571: "Q. As to the proportion of the nickel which should be attributed to the Third Avenue Line and the proportion to the spur," that is the question as to what, in substance, we should be paid, if anything, for this railroad facility," you answered "that is not a great discrepancy," and a little further down the page you say "I should say that is a very slight relative discrepancy." Now, doctor, relative to what? A. Relative to the factors of uncertainty that were involved in the traffic and gross earning power of the spur.

2183 Q. You did not mean relative to your other discrepancies, did you? A. I don't know what you mean.

Q. Now, refreshing your recollection from what I have just recalled to your mind as to your actual testimony, you now know that there were before the Commission, before you were finally called from the stand, all these counts made by the City, by the Interborough Company and by the commission as to showing the exact amount of traffic of the spur, an actual count of the passengers, instead of being left, as you left that case, based solely upon the ticket sales? A. Yes, that is correct.

2184 Q. And you did not correct your testimony as to the supposed loss? A. And the counts were made at my suggestion very largely.

Q. They were actually made at your suggestion? A. Some of those counts were made at my suggestion.

Q. I thought you testified a little while ago that you did not know at that time— A. Subsequent to the introduction of my statements.

Q. Then you were very fully informed? A. Before the case was over, I was much better informed than at the beginning, and I allowed for

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those uncertainties to start with by the ten per cent.

Q. Now, Doctor, you testified as to the 10 per cent. at the very outset of your testimony, at the time which you said you did not realize there was a difference between the actual traffic and ticket sales, isn't that true? A. I do not believe I stated anywhere I did not realize there was any difference, but it is true that I did not know that degree of difference at that time, because the counts had not been satisfactorily made, and I had no facilities to make those counts. I realized that there

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probably was a difference, and I allowed ten per cent. for that difference.

Q. When and where did you make any suggestion to the City or to anybody to make a count? A. Mr. Nichols, I cannot put my fingers definitely on the place, because I haven't it here now. I myself made the suggestion by which—

Q. Doctor, that is enough. You have just stated, Doctor, that you did not place reliance upon counts at the time you made your ten per cent. hypothesis and your three per cent. hypothesis, that you did not rely upon counts that had been made. Now,

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what count had been made at that time? A. I have to rely on my memory now, because that I did not have a chance to go over, and it was outside of my control, but on my memory there were papers, letters and documents which were submitted by the Interborough, sent by the Interborough to the Borough President and probably to the Commission, and I saw those papers, went through them, in which the claim of 290 per cent. was made and in which the claim was made that the eastbound traffic exceeded by 15 per cent. the amount of the ticket sales, but all of those in my opinion

2188 were inadequately supported at the time, and I did not use them for that reason, and instead took the broad percentage of 10 per cent. to cover all uncertainties in those factors and others.

Q. Now, Doctor, you just heard me read your testimony given long subsequent, as the pages of the minutes show, which I stated. I called your attention to this element, we will stick to that for a moment, of the 298 per cent. shown by our actual count?

The Court: What does that 298 represent?

2189 Mr. Nichols: That represents the actual traffic as compared with the ticket sales. That is a count which we made, but as there is so little difference, Mr. Burpee has taken the latest count, 277, so as not to encumber the record with all these counts.

The Court: What is the percentage you are adopting now?

Mr. Nichols: 277, that is the very last one that was made.

Q. Now, Doctor, I read your testimony that you did not know about that count, and you have testified several times already that when you gave this 10 per cent. guess of yours or whatever you

2190 want to call it, and the three per cent. one, both of which you did, that you did not know about any such count. You say now that was contained in a letter that you saw down at the Interborough office or somewhere? A. No, with papers that I went over.

The Court: He does not know where they came from, but he went over them.

The Witness: The record will show nowhere that I said I knew nothing about those counts.

Q. I have read your testimony, Doctor, referring to the testimony actually given of that count—

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when was that count made, that 298 per cent.? A. What count?

Q. That one that we had made? A. I don't know.

Q. You don't know? A. I don't know.

Q. Will you swear that count was made at the time you went down to your office? A. I will not even swear you made the count. I saw your claims in your letters and papers, and the figures were not in evidence at the time in any connection whatsoever. I knew of your claim and nothing else.

2192

Q. Doctor, wasn't what you saw the information that we prepared and sent to the Borough President's office in a letter signed by Mr. Skitt, the president of the Manhattan Company, on May 20th, 1920? A. It probably was. I am prepared to assume it was.

Q. At that time, Dr. Bauer, wasn't this 6½ per cent. of supposed discrepancy between the amount of the tickets sold and those found in the box the matter which was contained in our letter sent to the Borough President, which you went down to our office and consulted with Mr. Bruce about? A. Yes, there was a claim in your documents that there was a fifteen per cent. excess.

2198

By the Court:

Q. Of what? A. Of eastbound traffic over ticket sales at the Grand Central Spur Station. I challenged the accuracy of it and subsequently a count of that was made and it proved on that count to be 6½ per cent., and it was my suggestion that led to that specific count.

By Mr. Nichols:

Q. When was the specific count taken? A. I don't recall.

2194 Q. Didn't you on the trial say that you went down to see Mr. Bruce about this discrepancy between the ticket sales and those in the box, and persuaded Mr. Bruce that there was nothing in it, and that the conclusion was entirely wrong, that ticket sales was the only basis? A. No, sir, I never said such a thing.

Q. I will read your testimony. A. Read my testimony into the record, you have the page reference, read the questions and answers.

Q. We will start with page 270, in which I asked
2195 you if you did not know that a year before we had reported to the Borough President the count as showing the difference between the north and southbound traffic of 43 per cent. as against 57? A. What is the page?

Q. 270.

The Court: Mr. Nichols, you said the north and southbound traffic; do you mean that or east and west?

Mr. Nichols: That was made for the Borough President in response to his request, preliminary to this matter of the removal of the station, for
2196 information.

The Court: Do you mean north and southbound traffic or east and west?

Mr. Nichols: I have just stated here, because I want to let the witness have the advantage of having the whole of it. The east and west is involved in it too. By reason of this question of the amount of ticket sales as contrasted with the cancelled tickets found in the box, the point which Mr. Devery made yesterday, that is what I am concerned with.

Q. I will show just what that count was, Dr. Bauer, I will read the whole of it. It was a post-

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card canvass, wasn't it, do you recall that we asked the people where they came from, and whether they were going to continue to use the elevated line or not? A. This relates to your count or to the Borough President's count?

Q. This relates to that information that you had access to in our office or you referred to? A. That is your count.

Q. Yes, our count. A. All right.

Q. The question at the bottom of the page:

"Q. And you knew that a year ago we had made a careful count showing an excess of 15 per cent. 2198
in the eastbound traffic over the ticket sales, you know that? A. No, I do not.

"Q. You do not know that?

"*By Mr. Devery*:

"Q. You knew he said he had? A. I knew what that letter stated, and I am also prepared to explain, as I understand that letter, and I am also prepared to say that Mr. Bruce's opinion agreed with mine as to the meaning of that letter"—

Mr. Bruce is the man you called here the other day? A. Yes.

2199

Q. On this very point (continuing)— "That Mr. Bruce's opinion agreed with mine as to the meaning of that letter—that the conclusion was erroneous." A. Yes.

Q. I am reading correctly? A. You are.

Q. Down a little further:

"Q. Do you know whether that is right or not, can be computed with absolute accuracy by counting the actual tickets in the box, and comparing with the tickets sold. A. If you take a long enough period of time to do it, I think that would test it.

2200 I would not agree that a day or two or three days count would show it.

"Q. How many actual days was this comparison based on? A. I haven't any idea."

You rejected it, you said Mr. Bruce agreed, and you did not know how many days it was? A. Wait a minute. That is not the question, that that is the matter Mr. Bruce agreed with me on.

Q. I will read the testimony. A. Read all the testimony and let us get all the facts accurately.

Q. This is about the 15 per cent. difference you
2201 referred to shown by a few days' count of the tickets in the box? A. Your claim of 15 per cent. against 6½ per cent. which was established by a longer count.

Q. Not our claim. This is in response to a request from the Borough President, you put this testimony in? A. No, I did not.

Q. Didn't you call Mr. Bruce here? A. The testimony we put in was the 6½ per cent. We never put in any 15 per cent. testimony.

Q. Mr. Bruce you called? A. We called Mr. Bruce on the 6½ per cent.

2202 Q. "I haven't any idea," that is, of how many days this count was that you rejected. A. That is not correct.

Q. Did you answer that question that way, "I haven't any idea?"

The Court: Let me see the record and see what you did answer.

Mr. Nichols: Top of page 272.

A. I am in error. That is correct.

Q. "Q. You assume it is incorrect without knowing whether it was one day or twenty days? A. I assumed it, after talking with your own men about it, and when they agreed with my own view of it."

2203

Doctor, what was the "it" there? It was the discrepancy between the ticket sales— A. As to what the 15 per cent. meant in relation to the ticket sales at the station.

The Court: Is it your contention now, Mr. Nichols that there is about 15 per cent. difference?

Mr. Nichols: Not at all.

The Court: You claim it is higher or lower?

Mr. Nichols: We claim the count taken of a few days of the tickets found in the box is entirely inconclusive. The thing is to count the actual passengers.

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The Court: What is your claim?

Mr. Nichols: That is entirely inconclusive.

The Court: What do you claim is the actual percentage based upon a count of passengers?

Mr. Nichols: No count was ever taken that was sufficiently long to determine whether it was a question of something peculiar on the days it was taken or what it was. We never placed any reliance upon that whatever.

The Court: So far as your count went, what do you claim now the percentage is?

Mr. Nichols: We haven't put it in at all, and I am now, if I might be permitted to explain, just showing what the doctor testified to before, that he thought he got Mr. Bruce to agree with him, that it was worthless.

2205

Q. "And when they agreed with my own view of it," by "they" you mean Mr. Bruce and his assistants? A. That is correct.

Q. At page 253, the next page, you testified that you based your entire calculation upon the supposed loss to the Interborough Rapid Transit Company involving an operation of that spur on the basis of the tickets actually sold and did not try

2206 to find any of the real facts in the case at all, is that the idea? Then at the bottom of the page I asked you a question I have already referred to and you said, "the basis is the ticket sales," that was my question as to the basis of your testimony, and you answered, "The basis is the ticket sales," and then you testified that if there were discrepancies of 50 per cent. shown by the actual count of the east and west passengers, that would not affect your testimony. Now, we come along and find out how many days you thought, after
2207 your talk with Mr. Bruce, it would be necessary to have a count that would show anything worth while or conclusive in regard to the number of cancelled tickets, compared with the tickets sold. Now we come to page 275:

"Q. What days of the week do you consider fair and how many days? If it is going to take a month for us to try to find out, let us do it under the direction of the Public Service Commission and find out the facts? A. It has not been my problem to determine just what days should be selected, but it is perfectly clear that a count on
2208 any one day might miss the facts." That is your answer? A. That is my answer.

The Court: Let me interrupt. You are speaking now about the difference between the tickets sold and those cancelled?

Mr. Nichols: In the box, yes.

The Court: And you are also speaking about the excess of travel there over the tickets sold?

Mr. Nichols: Yes, only for the purpose of showing that the doctor disregarded it.

The Court: What is your contention with respect to those two matters? They are a little confusing to me.

Mr. Nichols: I will try to be clear.

The Court: In other words, would you sell more tickets there than were actually put in the box and cancelled?

Mr. Nichols: No, I think there is no evidence of any weight on that point. I am just reading my statement before the Commission that I think before there could be any conclusion drawn upon that fact, the difference between the tickets in the box and tickets sold, that there should be a count of a month and it should be made by the Commission. That was my position, and I have just read 2210
the language which I used there making that very clear indeed.

The Court: I see.

Mr. Nichols: That was never done.

The Court: I think I have it clearly. In other words, there might be more tickets in the box then were actually sold.

Mr. Nichols: Yes, we know from our actual railroad experience that we take it a few days and find it one way and another time another way.

The Court: Any passenger going east would have to buy a ticket? 2211

Mr. Nichols: Yes.

The Court: So the cancelled tickets ought to represent the eastbound traffic?

Mr. Nichols: Yes, they ought to in the course of a year all over the system at any rate, and if there is any peculiar reason why the people should not buy tickets there and put more in the box than they buy—

The Court: Do you make a record of cancelled tickets?

Mr. Nichols: No, we do not keep any record of cancelled tickets. We know the tickets issued to

2212 station agents and we know the cash they turn in, that is our check.

Q. Proceeding at page 275, I asked the question as follows: "Q. The Commission has an ample force and it is very easy to count the cancelled tickets in the box during the day, and we can find out about this 14 per cent. plus, as it was found, and see how much truth there is in the statement," that was my question, wasn't it? A. That is correct.

Q. I was not running away from that? A. No,

2213 you were not.

Q. You answered, "You mean try to establish how that 15 per cent. was determined?" A. Please won't you read my answer to the next question.

"Q. Let me state— A. I am perfectly willing to find out about that." Now, Doctor, we all agree that if you were going to rely upon any percentage of tickets sold as compared with tickets found in the box, that there ought to be a full, long period of investigation by the Commission as an impartial body, that was my suggestion? A. Yes, and I thoroughly agreed with it.

2214 Q. You agreed with me? A. Yes.

Q. I want to be absolutely fair about it, Doctor. If you did rely upon ticket sales solely, you did not then rely upon any cancelled ticket evidence that there was? A. I allowed for that claim by the 10 per cent. allowance.

Q. The 10 per cent. may cover a multitude of sins, but I want to stick to my question? A. It was put in there for that purpose, Mr. Nichols.

Q. You did not have any valuable information except ticket sales, that you considered valuable? A. That is correct. I did not consider your 15 per cent. claim established, and it subsequently was

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disproved, and I did not consider your other claim established.

Q. Now, doctor, continuing at page 278, where we were still discussing the insufficiency of the count taken to establish the disparity or advantage or show the apparent disparity between tickets sold and in the box, at the bottom of the page you say, "I do not have to pass on the validity of your proof, and as far as I am concerned, if these counts are accurately and actually made, two days count would be better than one and would raise a better presumption than one day; but I would not admit 2216
at all that they prove the matter finally nor actually." Doctor, what did you rely upon in determining the relative distances travelled by spur passengers on the Third Avenue Line? A. I relied upon the postal card canvass made.

Q. How many days was that? A. That was one day.

Q. That is all, Doctor.

The Court: You asked what he relied on.

Mr. Nichols: I asked how many days he relied on. He said one day, postal card canvass. If he has anything to say upon that point, let him say it 2217
but I do not want a speech.

Mr. LaMotte: You can move to strike it out, but you cannot muzzle the witness.

A. I took to start with that postal card count, but I realized clearly that the basis of it was inadequate, and that was one of the reasons why I did not take the two and one-half per cent., but took three, and in my second one I took ten per cent., I covered that inaccuracy.

Q. Page 279, Doctor, you refer to that same one day's postal card canvass upon which you based your determination, upon which your figures as to

2218 the profit and loss of the spur were reached, on a one day canvass? A. Yes.

Q. And that at page 279 is put at 5,000 cards issued and 440 were received; that was your basis for that. As far as the difference between the ticket sales and the tickets in the box is concerned, two-thirds down on the page, you say, "I think it was not sufficient,"— A. Just wait a minute. This was in reply to what question?

Q. I will read the whole thing:

"Q. You based another one of the bases of your
2219 determination, as to the supposed loss in the operation of the spur, on the number of people who travel north as against the people who travel south. Now, you determined that with a postal card canvass, gotten out on a single day, of which, out of 5,000 cards issued, 440 were received." That is right, isn't it, Doctor? A. That is your question?

"Mr. Devery: No, it was held on three days.

"Mr. Nichols: I understood they were given out on one day. That was sufficient for you to determine that important fact as to the number of people using our spur."

2220 We were right about that, Doctor, it was one day. A. What is that?

Q. That was one day. A. I do not recall whether it was one day or three days, but—

Q. That is all. A. But my answer, what was my answer to it?

Q. We come to the answer: "Well, that was what was used. I think it was not sufficient." Now you mean, whether it was one day or three days, it was not sufficient? A. That the number was not sufficient—that is, one day's count and the number was not sufficient.

Q. Neither was sufficient? A. No.

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Q. Nothing was sufficient about it. "I think it was not sufficient. Now let us get at the facts. It was not sufficient; I wished to have more; but then, at the same time, it was indicative, as a single figure, it was usable." That is your opinion about the sufficiency of that count? A. Yes.

Q. That is fair? A. Yes, but read the rest.

Q. I will read the rest: "But again, go back to my statement which I have repeated again and again and will continue to do so as long as you continue with this futile line, allow all those margins, and it does not make any difference; you still show a large loss for the spur. The reason I presented two computations, with such tremendously different results, was to allow for the uncertainty of those factors, and in the second computation I went to the limit of allowing and minimizing the charges against the spur, and then even there I showed a loss of $20,000." That is correct? A. That is correct.

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Q. So whatever the traffic facts were, it did not make any difference? A. That extra ten per cent. covered all of the margins of uncertainty.

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Q. Why did you take ten per cent.? A. Because it was an even figure and it went beyond the limits that reasonable judgment on the matter would dictate, to be extremely liberal in this computation, because there were uncertain facts.

Q. Liberal to whom? A. To the benefit of the spur.

Q. You took an even figure, and then took three per cent.; was that because as a statistician you thought three per cent. was right? A. The postal cards showed 2½ per cent.; three per cent. again gave the benefit of the doubt to the spur.

Q. The postal card canvass, do you now recall

2224 whether that was a one day or three-day canvass? A. I do not recall whether it was one or three. It was a short period and involved a small number of people and was insufficient.

Q. At page 282 comes my statement "If there is any question as to the accuracy or sufficiency of our count, we want to have the commission make one," and Commissioner Barrett at the foot of the page said they were already making one and would have it right out, and then you testified away along at the end of the case, several days later, on this
2225 same question, referring to this same count, but you did not change your testimony as to our supposed loss on the spur, did you?

Mr. LaMotte: What page is that?

Mr. Nichols: I am now turning over to his final appearance on the stand.

Mr. LaMotte: What page?

Mr. Nichols: It was the last day, I believe. That was page 569 and 570.

Mr. LaMotte: What date?

Mr. Nichols: The date was April 8th, 1921, and the time when he gave the earlier testimony back
2226 here was March 23rd, 1921.

Q. There was an interval of time there, with knowledge of all these facts for you to have attempted a computation upon the accurate and actual volume of traffic, wasn't there, doctor? A. Yes, I could have made another computation; I was not requested to do so, and an accurate recomputation on the basis of the newly revealed facts would not have shown as favorable results for the spur as my ten per cent. revenue allowance.

Q. Nobody asked you to testify on the basis of the exact facts, doctor? You said you were trying to be liberal. Why weren't you liberal to yourself

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and why didn't you insist that you could not testify except upon a basis of fact?

Mr. LaMotte: I object to that.

Mr. Nichols: This is cross examination.

The Court: I will allow it.

Mr. LaMotte: Exception.

A. All of these questions were gone over and into and repeated over and over again, and the facts appeared clear at the conclusion that my 10 per cent. allowance covered adequately and liberally all of these matters in dispute, and it did not seem worth while to make another computation. It was not a computation for the value of the spur, it was a computation to show merely on the basis of traffic and earnings that the spur was not needed, and for that purpose a final refinement, after all the record was not necessary.

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Q. Doctor, wasn't that ten per cent. computation and the three per cent. computation given by you at the outset of your testimony, as part of the computation which showed a supposed loss of traffic on the spur? A. Yes, it was given at the outset, but when I knew what your claims of 298 per cent. were—I knew these claims, though they had not been established, and for that reason I allowed ten per cent.

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By the Court:

Q. What did you understand their claim of 298 per cent. represented? A. That the total traffic on the spur amounted to 298 per cent. of the ticket sales at the Grand Central spur station.

By Mr. Nichols:

Q. Doctor, you have testified that you thought before the commission that the counts of the

2230 tickets in the box contrasted with those of ticket sales was inconclusive because of the insufficient length of time that those counts were taken; you said that the fifteen per cent. that appeared in these papers that were given as information to the Borough President, that was asked for, was an inconclusive basis and meant nothing, and you persuaded Mr. Bruce that way, but that subsequently there was another count taken, and that you have accepted here this sacred 6.5 per cent. that counsel made the basis for his motion to strike out our testimony, based upon the actual facts. Now, what was that 6½ per cent. taken on? A. That 6½ per cent. included a full week's count, day by day of the ticket sales at the station and the dropped tickets, whereas your fifteen per cent. was based on two days of count of the tickets dropped with the corresponding two days of ticket sales, which on investigation proved to be an unusually low period of the week of ticket sales.

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Q. Doctor, this is a question merely as between the number of tickets in the box, and the tickets sold— A. The week's count eliminated all variation in sales and travel from day by day during the week. It was much better, a great deal better than two days count as you took it. A month's count, as you suggested, would have been much better, but the Commission was not willing to grant the time.

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Q. The three days' count showed 15, and then there was one you knew which was a week which showed 6.5, and you have accepted that as something pretty final here, and if it had been a month it might have been less in the box? A. And it might have been slightly more.

Q. It might have been more or less if you had

2233

that count for the month. Didn't you prove that six and one half per cent. in a letter here signed by this same man Mr. Bruce? A. That is correct, but the inspection was at the request of the Commission.

Mr. Nichols: Have you the letter here, the letter of Mr. Bruce? It is in evidence already.

Mr. LaMotte: Mr. Bruce's testimony is in, that is better than his letter.

Q. Mr. Bruce came here with a letter showing of 6½ per cent.; you are sure that was seven days? A. Yes, sir.

2234

Q. You are sure? A. Yes, sir.

Q. And that was changed from 15 to 6½. Now, that illustrates, does it not, the great uncertainty in these counts of tickets in the box and those sold? A. It illustrates the uncertainty in part, but it eliminates the variation that you have in your two days' count, because your two days' count were compared with two days of low ticket sales, whereas in the week's count, it took a week's ticket sales and a week's traffic.

Q. We are all agreed on that. I suggested a month. A. Then a week is better than two days to that extent. I wish it had been a month.

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Q. This was the same Bruce that the testimony that I have read was referred to by you as the man you went down to see and you both agreed that counting these tickets in the box was an inconclusive method, and you stuck by the ticket sales in your testimony, is that right or wrong? A. I am answering that it was the same Bruce that I conferred with. The rest is not answered.

Q. He was called here, Doctor, and he produced a letter and put it in evidence. You did not ask him about that matter that you agreed on at the

2236 time of the commission hearing, that these counts were no good.

The Court: Who do you mean, Mr. LaMotte?

Mr. Nichols: He was present when this same Bruce produced a letter showing 6½ per cent.

A. My computation was based on the 6½ per cent. established by Bruce and not by your unsupported 15 per cent. claim.

Q. Bruce made both of them, didn't he? A. I don't know as to the first, who made it. That was simply asserted, your fifteen per cent. claim was
2237 asserted in a letter, that had no foundation, it had not been in evidence anywhere.

Q. What was this letter that Bruce did put in evidence when you were here the other day?

Mr. LaMotte: The evidence speaks for itself.

The Court: I will allow it.

A. I am not certain he had a letter here. We had previously put in evidence a statement signed by Bruce in the Public Service Commission proceedings, and that statement we subpoenaed and Mr. LaMotte put in evidence here, I don't know what the exhibit number is, and it was that state-
2238 ment with which Mr. Bruce was confronted the other day.

Mr. LaMotte: It was not a letter, it was a statement of his count, tabulated statement, showing the results of his seven days count.

The Witness: And that statement showed for a full week's period an excess of tickets dropped, that was prior to the installation of the turnstiles, an excess of tickets dropped over ticket sales of 6½ per cent., as compared with an unsupported 15 per cent. claim.

Q. Well, it is in evidence, and that is enough on that. Now, Doctor, you testified just now, if I

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understood you correctly, that when testifying before the Transit Commission you gave 3 per cent. of the total traffic receipts from the spur as your allowance as an expert statistician of the gross earnings which should be allocated to the Manhattan Company in respect to this spur, did you not? A. I allowed in one computation three per cent.

Q. You allowed in one computation three per cent.? A. Yes.

Q. And that computation was based upon the ticket sales alone, was it not? A. That is correct.

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Q. And the gross receipts at that time that you gave for 1920—that was the year, wasn't it? A. 1920 was the concluding year. I gave a statement for a five-year period, I believe.

Q. That was the latest year you gave? A. I think so.

Q. It must have been? A. Yes.

Q. That was $152,543, the gross sales? A. What page is that?

Q. I mean the gross receipts? A. Yes. What page is that you are reading from?

Q. That is page 178, Doctor? A. Yes, that is correct.

2241

Q. You took the total tickets sold and then you tabulated them and multiplied by five, and that gave you the figure $152,543? A. No, you are in error, your computation is wrong.

Q. I am not an expert statistician, Doctor? A. I realize that.

Q. Will you please do it yourself. I am reading your testimony before the Transit Commission; if that is wrong, will you make it right now?

The Court: There is too much arguing and fencing. See if we cannot get along more rapidly.

2242

Q. Is that correct, that you took the ticket sales? A. I took the ticket sales.

Q. "Then I computed the total receipts from the spur passengers, by multiplying the total number simply by five." I took the ticket sales, tabulated them, tabulated the ticket sales, multiplied the result by five, and took three per cent. of that.

Q. I am reading your exact testimony; I will continue to read your testimony: "That gave me $152,543 for the year 1920, as the total revenues collected from passengers using the spur." A.

2243 That is correct.

Q. In other words, you took the percentages shown by this postal card canvass to get the basis of what should be allocated to the spur? A. That is right.

Q. You answered "Exactly"; and applied the percentage to the apportionment of revenues, and in this way I assigned three per cent. of the total collections from the passengers that used the spur, to the spur; this gave me $4,576 for the year 1920." Is that right? A. That is correct.

Q. In your Exhibit 40 you have again in this

2244 trial calculated the gross revenue to be allocated to the spur for the year 1920, have you not? A. Yes, but also up to 1923.

Q. Yes, Doctor, I know. What was the gross revenue collected for total passengers on the spur at 5 cents? I am reading a sub-heading No. 7 of the exhibit which you stated was prepared by you.

Mr. LaMotte: What exhibit?

Mr. Nichols: Exhibit 40.

Q. What did you in your testimony on this trial state—I am using the language of the exhibit—was the gross revenue collected for total passengers

2245

on spur at 5 cents? I notice you have that underscored. What was it, what was the gross revenue, Doctor? A. Before the commission or in the present exhibit?

Q. Here? A. On the 5 per cent. basis here, the revenue assigned to the spur is $10,559.77.

By the Court:

Q. For 1920? A. For 1920.

By Mr. Nichols:

Q. The gross? A. That is correct.

2246

Q. $211,000? A. I did not understand what you meant by gross. The gross collected from all the passengers is stated here at $211,195.40, compared with my previous computation in the Public Service Commission hearing, 1921 computation, of $152,543.

Q. That is exactly it, yes. What was the net which you allocated to the spur as a result of your computations as stated in your testimony before the Transit Commission? A. You mean by net the three per cent. of the total collections?

Q. Yes. A. That was $4,578 before the Transit Commission.

2247

Q. What is it that you allocated to the spur in your testimony on this trial? A. For the same year, on the five per cent. basis, instead of the three per cent., $10,559.77.

Q. You used a different gross, because you used a different method of determining that and you used five per cent. instead of three per cent.? A. Yes.

Q. Why did you use 5 per cent.? Is that a round number? A. Yes.

Q. You used, however, another basis of deter-

2248 mining the 10 per cent., you said? A. In my Public Service Commission computation I used 10 per cent., because I realized the inconclusive factors in my 3 per cent. computation, to cover that. The 10 per cent. gave me over $15,000 compared with the $10,559.77 that I am using now, so my second computation was about 50 per cent. of revenue allocated to the spur in excess of what I am using now for 1920.

Q. Doctor, please confine yourself, if you can, to the question? A. I simply have to keep my own
2249 position clear on these things.

The Court: Just answer the questions. There is counsel here who will bring out anything he wishes by way of explanation.

Q. You say you had a net of $4,576 by your first method, and by your second method you had a net of $15,000—I mean an amount allocated as the earnings of the spur—of $15,248, and at the present time, for the same year, I mean on this trial, you gave it as $10,559.70. That means that is all the revenue, outside of certain general items of revenue, which brings it up at the present time
2250 to $11,990.87, which on this trial you have allowed. Those three different figures represent what in your opinion at the various times you have given them was the amount which we should be entitled to earn on the spur? A. Yes.

Q. Doctor, you have made various tabulations of the amount of expenses which you have allocated to the spur; you read your testimony over, and I think we will save time if you will just state the different amounts that you gave before the commission. Start at page 197 on that. Don't you recall it without reading it over?

The Court: Let the witness find it himself, it will save time.

2251

A. 197 does not seem to be the page.

Q. Page 179. A. Now, you want me, as I understand it, to summarize briefly how I computed the expenses?

Q. (Question repeated)? A. In the first computation before the commission the computation of expense on page 179 of the record, was $63,758.

Q. That was the difference between the cost of $63,334 and the receipts apportioned— A. I beg your pardon, I misread, I dropped a line too far down, I read the wrong figure. The cost that I should have read was $68,334.

2252

Q. Very good. Then continuing you say, "And the receipts apportioned to the spur, deducting that, the difference would be $63,758," which would indicate on the basis explained the loss resulting from the operation of the spur. Now, the other method, Doctor, of determining the expense of the spur? A. Yes, in the second statement, the cost of operation was stated on page 183 as $41,804.

Q. Then you deducted the revenues, you took the $15,254, by one of your methods, and this left the total amount of the spur operation amounting to $26,550, is that right? A. That is correct.

2253

Redirect examination by Mr. LaMotte:

Q. Doctor, have you got the date that you gave your first computation before the Public Service Commission before you? A. Apparently March 3rd, 1921.

Q. March 23rd? A. Yes.

Q. That is the computation which you used when you allocated to the spur three per cent. of the revenues from passenger service, is that right? A. Yes.

Q. What other information did you have at that time upon which to base this calculation, except

2254 the ticket sales at the Grand Central Station? A. I had the claims made in the company's letters previously referred to, and besides that there had been a partial account, I believe by the Borough President, but it was only partial.

Q. A count of what? A. Of westbound compared with eastbound traffic.

Q. How many cards given out at that time, do you remember? A. That was a count of traffic the Borough President, if I remember correctly, had made for part of a day, a count—

2255 Q. For part of a day? A. Yes, for part of a day, a count of west going traffic and east going traffic.

Q. Is that the only information you had? A. That was the only information that I had besides the unverified, as I viewed it, unverified claim of the company.

Q. What was the date you gave your second computation? A. That was the same day.

Q. The same day? A. The same day.

Q. And you changed this allocation from three per cent. to ten per cent. that day? A. I presented

2256 the two computations, Mr. LaMotte, for the reason that I was conscious at the time of these uncertain factors, and I put in the two computations together for the information of the Commission.

Q. The uncertain factors that you had in mind was the possibility that there might be more tickets dropped in the box than ticket sales and as to the uncertainty of the length of the distance the average passenger travelled? A. Yes, also the third uncertainty of the proportion of westbound traffic to eastbound; there were three points of uncertainty.

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Q. That was the reason you adopted an allowance of ten per cent.? A. It was, sir.

Q. You spoke of some kind of a count being made by the giving out of cards around that time to ascertain the average distance a passenger travelled? A. Yes.

Q. Have you got the number of cards that were given out? A. Generally speaking 4,000 cards given out, and I believe about 440, something like that, received.

Q. And it was your opinion that the result of that attempt was so indefinite and uncertain that it could not be used? A. It could be used, but there was too much uncertainty in it, and I aimed to counterbalance that by the 10 per cent. allowance.

2258

Q. This count which was made by Mr. Bruce was in the week ending April 7th—

Mr. Nichols: Do not ask leading questions on redirect examination.

Mr. LaMotte: If I followed your method, everything would be leading.

Mr. Nichols: I was cross examining.

Mr. LaMotte: No, your own witnesses.

2259

Q. Do you recall that the count made by Mr. Bruce was in the week ending April 7th, 1921; isn't that correct? A. That is correct.

Q. And that was the month after you had testified before the Public Service Commission as to your method of computation, isn't that correct? A. Yes, it was in the following month.

Q. You were asked about your being recalled at the end of that proceeding by Mr. Devery. Were you requested at any time by Mr. Devery to make a new computation based upon the count by Mr. Bruce? A. No, sir.

2260 Q. You were not conducting the case? A. No, sir.

Q. You were a witness and Mr. Devery was the attorney, is that correct? A. That is correct.

Q. Dr. Bauer, that as I understand it, was a proceeding instituted before the Public Service Commission, or by the Public Service Commission for the purpose of determining the necessity for the spur, isn't that correct? A. That is correct.

Q. Not for the purpose of determining the actual value of the property? A. That is correct.

2261 Q. Now, in your calculation which you testified to in this proceeding, you had the count made by Mr. Bruce, did you not? A. Yes, I had Mr. Bruce's count.

Q. You had the count made by Mr. Standfast. the recent count made by Mr. Standfast? A. Yes, sir.

Q. As to the average distance that people travelled on the spur as compared with the Third Avenue? A. Yes.

Q. And at that count, what number of cards were given out, do you remember the number of cards.

2262 approximately? A. About 7,000 cards.

Q. You received how many back?

The Court: That is already in evidence.

A. 7,700 cards given out and we received 4,828.

Q. Is it your opinion, Dr. Bauer, that the installation of the turnstiles at the Grand Central station of the spur demonstrated the approximate correctness of Mr. Bruce's count, that there are more tickets dropped in the box than ticket sales? A. Yes.

Q. Have you made what has been termed by the railroad in this case a trend? A. Well, I studied the figures for that purpose.

2263

Q. It was made under your supervision, wasn't it? A. I have made a study of the trend, yes.

Q. And you had a map or a chart made? A. A curve, yes.

Q. Is that correct? A. Yes.

Q. And that chart takes in the years 1919 up to the date of demolition or date that the spur stopped running? A. Yes.

Q. Is that correct? A. That is correct.

Q. That began the year after the Lexington Avenue subway was opened? A. Yes.

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Q. (Handing paper.) Is this the chart? A. Yes.

Mr. LaMotte: I offer that chart in evidence.

(Admitted in evidence and marked City's Exhibit No. 58.)

Q. Doctor, look at the chart, City's Exhibit 58; take the period between May, 1922, and March, 1923; did the ticket sales during that period show any upward trend? A. No, sir.

Q. What did it show? A. From May, 1922, to March, 1923, after May there was a drop for two months, and then the usual summer rebound, and then a drop and a drop again, and in general the direction during the period was downward.

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Q. In April the turnstiles were installed, were they not? A. That is correct.

Q. And then there was an upward trend immediately? A. Yes, there was a large jump.

Q. And May was the first month, May, 1923, in which they had an entire month of turnstile operation, isn't that correct? A. That is correct.

Q. And the trend went up higher than in April? A. Yes.

Q. Now, between May and October, the beginning of October, what was the situation? A. There were first two months of rather decided drops and

2266 then slight rebounds for August and September, but not the usual amount of rebound that you find in previous summer months for the same period.

Q. Then you come to October? A. Then there is a very sharp rise.

Q. Have you examined the counts in many of the stations, both of the El and of the subway for October, 1923, for the purpose of ascertaining whether the traffic at that time at all those stations was higher, much higher than the month before?

Mr. Nichols: I object to the form of the ques-
2267 tion. Ask if he examined it and what it shows.

The Court: Yes.

Q. Have you got your list there? A. Yes, that is for the elevated stations.

Q. Just state what they show? A. On the Sixth Avenue, 42nd Street elevated station, this is Exhibit 51, the northbound traffic jumped from 325,010 in September to 368,036 in October.

Q. Now, take November? A. And that to 351,-041 in November. On the same exhibit, for the southbound traffic the jump was from 200,927 in September to 231,513 in October, and back to 217,-583 in November. Then on Second Avenue, 42nd
2268 Street, this is Exhibit 53, September, 185,056, October 214,468, and November, 203,873. On Third Avenue elevated at 42nd Street, northbound traffic, Exhibit 50, September, 216,320, October, 239,-592, November, 223,026. Southbound traffic, September, 123,237, October, 137,235, November, 129,-040. I have two others, if you want them, they all show the same thing.

Q. That is enough. That increase for October was general? A. Yes.

Q. Would you describe that as what has been called the seasonal variation? A. No, it is more

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than seasonal, Mr. LaMotte. In October on all of these lines, that is last October, 1923, it shot up unusually in October and on all those designated stations, much higher than October in other years, and then shot back.

Q. Is it your opinion that the figures which you have used and analyzed show that in December, 1923, there was an upward trend? A. Taking the figures for the purpose in comparison, I do not believe there is any trend upward at all.

Q. Now, Doctor, of course you were a witness before Public Service Commission in 1921, March. 2270
Is it a fact that the railroad contended before that commission at that time that there was a saturation at 42nd Street? A. That is the subway?

Q. Yes. A. Yes, the claim was made.

Q. And since 1921 is it not a fact that the traffic at the subway increased between 1921 and 1923 from 29,397,748, to 33,137,199? A. That is correct.

Recross examination by Mr. Nichols:

Q. Doctor, you have referred to a comparison between October and September on the Sixth and Ninth Avenue lines in your testimony you have just given? A. Yes. 2271

Q. Just to illustrate, did you know the world series games were taking place at that time in October and were a serious disturbing factor in traffic? A. That is this last October?

Q. Yes. A. Exactly. That is the reason—

Q. That is all. Taking single months like that, haven't you got to, in all fairness, determine the disturbing factors? Didn't you realize, for instance, that the vacation period in the north in the summer affects traffic at different stations in different parts of the city very differently? A.

2272 Exactly. The reason I stated that was to show the exceptional conditions in October.

Q. Exceptional where, on Sixth or Ninth Avenue? To show the conditions at the spur station, if you are going to take any one month, you would have to study whether the vacation traffic at the Grand Central Station affected that as against the current over on the Sixth and Ninth Avenue lines? A. Yes.

Q. If you are taking a downtown station, you have to consider that there in the financial and
2273 brokers community, things slow down in the summer? A. Those are exactly the reasons I had in mind for refusing to take a month or a short period and show a trend.

Q. Now, Doctor, I am only talking about taking a month on one single line and then going over to the subway or to the other side of the City and comparing with over there. All our comparisons on our charts showing the present trend stick right to 42nd Street spur and the 42nd Street Third Avenue station, don't they, and show the comparisons by years, ending with the different
2274 months and so on at that point, where all the varying seasonal features remain the same from year to year, is that so? A. I don't think so.

Q. It ought to be so then, shouldn't it? I mean to really determine whether or not there has been during the last period before the spur was closed or the year before that evidence of a trend upward, you have got to compare the month of one year with the month of another year at the same station, unless you give all the conditions surrounding what is happening in a different part of the city, isn't that so? A. You have got to make the conditions as nearly comparable as you can.

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Q. And the charts presented by the Manhattan Company for that comparison—that is the chart Exhibit K-5 from which the trend is taken, which is used invariably by the Manhattan Company, it takes periods ending in each successive month, covering the entire year, so as to include all seasonable variations of the same station, that is true, isn't it? A. No, sir, they have—

Q. Isn't that true? A. No, it is not. That is, my answer is that it is not comparable, the figures are not comparable as you use them in those charts.

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Q. I am only asking your understanding of the method employed in the Manhattan Company in getting that trend line? A. That is exactly what I have in mind, the comparison is not comparable by the methods used.

Q. I am not asking whether you thought it was the method that was suitable for your purpose. I am only asking whether this was the way we did it, as you understand it.

By the Court:

Q. In other words, they took a 12 month period and compared the months in that way? A. In some cases they took a 12 month period, in others other periods, but as to the comparability of the periods, the periods were not comparable.

2277

By Mr. Nichols:

Q. You stated from a chart you have just introduced in evidence here as City's Exhibit 50, that this 6½ per cent. ratio is due to the discrepancies between ticket sales and actual passengers and that that is now made evidence by this chart in some way, that the turnstile count

2278 shows the 6½ per cent. difference, is that right? A. The installation of the turnstiles shows a difference that is close to the difference indicated by the exhibit named.

Q. What I am asking you is, do you think your 6½ per cent. is verified by this chart or anything else? A. I think it is very substantially verified.

Q. You testified that nobody asked you to make a sufficient count to determine what the real percentage was; the 15 is wrong, you say, because it was a short time, it ought to be a month, and
2279 you have taken 6½, which you said was a week. You testified before the Transit Commission that you were in the office of the Corporation Counsel, and you knew the Corporation Counsel here as in that proceeding had to try the case to determine values, the same question that you testified about here? A. That was not my understanding. The Corporation Counsel in the Commission case was not trying values.

Q. You testified to values? A. I did not.

Q. You testified to losses as you claimed from the spur? A. I did that.

2280 Q. And you knew the question of value was necessarily coming up in the proceeding to condemn the spur? A. If condemnation proceedings came up, I knew the question of value would come up, but it was not up before the Commission.

Q. You knew if it did come up, it would be conducted by the Corporation Counsel of the City of New York, the condemnation proceeding? A. Yes, sir.

Q. That was what that hearing was for, to determine whether there should be a taking of the spur, which would necessarily result, as the bill would require, in condemnation proceedings. Did

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you ever suggest to the Corporation Counsel that there should be a sufficient count, that is, from your point of view a sufficient count to determine what, if any, difference there would be between the turnstiles and the tickets put in the box? A. I do not recall that I made such a recommendation definitely to the Corporation Counsel.

Q. That is, you didn't do it? A. I didn't say that.

Q. Did you say yes or no? A. I can't answer, I don't remember.

Q. You don't remember whether you did? A. No.

2282

Redirect examination by Mr. LaMotte:

Q. Doctor, I call your attention to the Railroad's Exhibit K-5. You were asked about that yellow line on there. Please state to the Court why the periods which have been used to make that line are not comparable? A. The figures or the curve from April, 1913 on is not comparable with the curve preceding April, because on April 3rd turnstiles were introduced which measured, taking our Exhibit 50 basis about 6½ to 7 per cent. more traffic than the ticket sales. Prior to April it was ticket sales, subsequent to April it was turnstiles. Roughly, on the spur that amounts, on the basis of that exhibit, to about 7,000 to 7,500 a month more turnstile reading than ticket sales. Consequently, beginning with April the year plotted here for the year including April showed one month's turnstile reading, which would be about 7,500, roughly greater than the corresponding ticket sales would have indicated. That of course naturally gives a step upward. The year ending with May included two months of turnstile readings, or

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2284 roughly 15,000 more than there would have been if the basis of comparison had been continued, namely, ticket sales; so in the same way June had three such months or roughly 22,500 more than on the basis of ticket sales, and so this work cumulated or pyramided each month as we went along, included one month more of turnstile readings or a distorting factor of about 7,500 arbitrary, unreal increases in traffic, so that the whole trend there is not a trend at all due to traffic growth.

Re-recross examination by Mr. Nichols:

2285 Q. Would you attribute increases at other 42nd Street stations, I mean in this same period that you have been referring to as due to the putting in of turnstiles? A. You are referring to this same exhibit, on the Third Avenue stations?

Q. I am referring to the Sixth Avenue and Third Avenue or any other 42nd Street station, showing in April, 1924, an increase over April, 1925, or May, 1924, over May, 1923, would you attribute any increase you found there to the 6½ per cent. ratio of turnstiles? A. I would not say the 6½ per cent. there, because I have no basis of measuring, but I

2286 would say that practically at every point on those elevated stations around on 42nd Street and 34th Street and 23rd Street, at nearly every one of those points, when the turnstile was introduced there was a sharp increase in traffic, measuring the more accurate reading of turnstiles compared with ticket sales.

Q. Then it was true that owing to the installation of the turnstiles there was a sharp increase in 42nd Street stations. Did that apply to all of them in 34th Street, for instance? A. I have not examined the matter in 34th or 23rd Street as carefully.

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Q. If it applied generally, then there ought to have been a sharp increase all over the elevated lines? A. That goes too far.

Q. I am just going far enough to have you answer that question. Did you make any investigation to determine whether there was a sharp increase over the lines generally? A. I did not.

Q. Did you make any investigation to determine whether there was a sharp increase on the Third Avenue line generally? The turnstiles were put in generally, weren't they? A. Yes, they were put in generally.

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Q. Did you find any sharp increase? Did you make any effort to determine whether there was any? A. I made no detailed study of the effect on individual stations, otherwise than the stations in the vicinity effected by the spur.

Q. But you did produce a chart here which you prepared showing that in 42nd Street there has been an enormous increase of traffic over a period of years going back to 1890? A. You are referring now to this (indicating)?

Q. Yes? A. This is all 42nd Street and not generally.

2289

Q. I know that. 42nd Street is exceptional in its traffic developing power, isn't it? A. Yes.

Q. And before the Transit Commission you testified that increase was to be expected on account of the subway conditions? A. On 42nd Street generally.

Q. And on this spur? A. I did not.

Q. You did not? A. No.

Q. Why not on the spur, like everything else, on account of subway congestion? A. Because the figures I presented in that statement both before the Commission and the statement brought down

2290 to date, it showed that in spite of the great traffic development in 42nd Street, it was not going to the benefit of the spur. I testified, however, before the Commission—

Q. Wait a moment. All I want is yes or no, whether it would benefit everything else but would not benefit the spur? A. If—

Q. Not if, I want an answer yes or no. A. Will you repeat your question?

Q. The question is, did you testify before the Transit Commission that there was to be expected

2291 an increase in the spur and the other stations in 42nd Street because of the congestion of the subway there? A. I did not.

Q. Do you now testify that no increase in the spur was to be expected while the other stations were expected to increase, yes or no? A. That cannot be answered yes or no.

Mr. Nichols: All right, that is all. I would like to call Mr. Schaeffer.

AMOS SCHAEFFER, called as a witness in behalf of the claimants, being duly sworn, testified as follows:

2292

Direct examination by Mr. Nichols:

Q. What is your position, Mr. Schaeffer? A. Consulting Engineer to the President of the Borough of Manhattan.

Q. And the President of the Borough of Manhattan is responsible for the relief of traffic conditions in the Borough of Manhattan? A. So far as physical changes in the streets are concerned.

Q. In the streets, such as the obtaining of more street space and in widening streets? A. Yes, sir.

Q. And has Borough President Miller been ac-

2293

tively engaged, with your assistance, in preparing plans and carrying them out also for giving more street space in the City of New York? A. Yes.

By the Court:

Q. You do know he had a plan? A. I do not know about this specific report, I did not know that the chief engineer had made such a statement as to the loss to the City.

By Mr. Nichols:

2294

Q. Perhaps I should have brought it out better by your own knowledge as to the loss to the City of New York involved in the very great congestion in which its principal thoroughfares are now placed by the increase of street surface traffic? A. There is no doubt that there is a loss; nobody can estimate what that loss is. Of course this congestion of traffic in the City is a tremendous inconvenience and great loss of time to moving traffic, there is no question about that.

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Q. Of course, it is very difficult to estimate, Mr. Schaeffer, and I was only referring to one of the estimates that has been currently stated in the press, not in order that it be put into the record in exact figures, but to show it was a very great and serious problem which rests upon the office of the Borough President here in New York today, doesn't it? A. Yes, sir.

Q. Did the Borough President concern himself, among other problems of that character, in obtaining traffic relief in 42nd Street, by removing this spur?

Mr. LaMotte: I object to that as immaterial, irrelevant and incompetent. We are not concerned

2296 about what the Borough President concerned himself about. This is just filling the record with a lot of stuff that is immaterial and irrelevant and not directed to the issue.

Mr. Nichols: I am qualifying the witness upon a point which I will come to. If it is immaterial and irrelevant, you may move to strike it out. I am qualifying the witness.

Mr. LaMotte: I will take a ruling anyway.

Mr. Nichols: I may say that—

The Court: I will allow it.

2297 Exception taken by Mr. LaMotte.

By the Court:

Q. Did he concern himself, do you know? A. He did.

By Mr. Nichols:

Q. Did you testify, Mr. Schaeffer, in the proceeding before the Transit Commission to obtain their certificate that the spur was an obstruction to the street, certificate of public convenience and necessity, both of which were made by the Commission; that was in 1921, do you recall testifying there? A.

2298 I recall I testified, yes.

Q. Did the Borough President draft or procure the drafting of the Legislation which resulted in the demolition of the spur?

Mr. LaMotte: I object to it as incompetent, irrelevant and immaterial.

The Court: Do you know?

A. He did.

The Court: I will allow it.

Exception taken by Mr. LaMotte.

Q. Mr. Schaeffer, did the Borough President, in the prosecution of this public improvement, the

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removal of this obstruction in 42nd Street proceed as though it were a city improvement?

Mr. LaMotte: I object to that as immaterial, irrelevant and incompetent. The papers speak for themselves, how this proceeding was started.

Mr. Nichols: I am only asking the very question asked by the Corporation Counsel in the proceedings.

The Court: What proceedings?

Mr. Nichols: In the proceedings before the Commission.

The Court: I will allow it, if he knows.

2300

Exception taken by Mr. LaMotte.

A. Repeat the question.

Q. I ask if in prosecuting the removal of the spur the Borough President proceeded and you proceeded as though you were prosecuting a city improvement? A. Yes.

Q. To relieve the street surface? A. Yes.

Q. Will you describe briefly the relation of the street surface traffic there in 42nd Street to the columns of the elevated railroad?

Mr. LaMotte: I object to that on the ground that it is incompetent, irrelevant and immaterial. This whole line of inquiry as to how much this spur constituted an incumbrance in 42nd Street has no place in this proceeding. What has that to do with determining what this is worth as a railroad?

2301

The Court: Isn't it a pertinent fact to know the purpose for which you sought to get rid of this structure?

Mr. LaMotte: The action of the Public Service Commission with respect to this spur is definitely set forth in the proceedings before it, and they speak for themselves. I have no objection to putting those whole proceedings in if Mr. Nichols

2302 wants them, and the testimony which went with them, but to bring a witness here and have him express his opinion of what Mr. Miller, the Borough President's motives were in doing all this is far fetched and has nothing to do with the case. This whole testimony is along that line.

The Court: Perhaps you ought to have Mr. Miller here.

Mr. Nichols: We have passed that.

The Court: If objection is made upon that ground—

2303 Mr. Nichols: I want to state that this line of inquiry is rendered in my opinion the more necessary because of the statements volunteered from time to time by the representative of the Corporation Counsel that the proceeding before the Transit Commission determined that this spur had no transit value, because that was the only thing before it. I want to show exactly what the problem was, and I want to show for this record the exact situation, because this case is undoubtedly going up on appeal, and I want to have something in this record to show where 42nd Street is in its relation to the surrounding district in this city.

2304 Mr. LaMotte: I have no objection to your showing it in the proper way. Get the proceedings before the Public Service Commission and put them in evidence.

The Court: The only question I am concerned with is whether this witness is qualified to state what the Borough President had in mind.

By the Court:

Q. Did you have direct charge of the matter yourself? A. Yes.

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Q. What was your official position there? A. Consulting engineer.

Q. What do your duties consist of? A. Practically all special assignments.

Q. Do you have to do with investigating street conditions with a view to relieving traffic congestion? A. Street conditions, working out plans for the relief of traffic conditions, as relating to surface railroads, elevated railroads and highways. For example, I have been engaged for more than a year on what is generally known as the Depew Place opening on the east side of the Grand Central Station, which is purely and simply a matter of relief of traffic congestion.

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By Mr. Nichols:

Q. Just now you have been working at the plans to continue the viaduct across 42nd Street at Park Avenue around the east side of the Grand Central station? A. Yes, sir.

Q. And part of that will take the place where the old spur station was? A. Yes.

Q. A part where it stuck out in Park Avenue? A. Yes.

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Q. So if there had not been the removal, that could not have been done? A. No.

The Court: I will receive the evidence.

Exception taken by Mr. LaMotte.

Q. So the necessity for this proceeding—

Mr. LaMotte: If necessity—my objection goes right down this line of testimony?

The Court: Yes?

Mr. LaMotte: If what happened before the Publice Service Commission is material, the proper way to prove it is to get these proceedings.

The Court: I do not understand he is attempt-

2308 ing to prove what happened before the Transit Commission. If you are attempting to prove what happened before the Transit Commission, that is another question, the record is the best evidence, but if you are simply attempting to prove what the Borough President had in mind when he attempted to get rid of this structure, that is another thing.

Mr. LaMotte: As I understand this line of examination, it is for the purpose of showing that one of the motives of the City and the Public Ser-
2309 vice Commission in making this determination was that the structure was an incumbrance in the street, as well as the other that it was no longer necessary for the public use. There is no question about that, but the proceedings before the Public Service Commission are the proper proof.

The Court: I understand that, if he is attempting to prove what happened before the Transit Commission. If he is, then that is the best evidence. If he is attempting to prove facts independent of that investigation, I will receive this testimony. It seems to me that it is material and
2310 relevant here to show what the parties had in mind when they removed this structure. Was it simply because it was a wholly unnecessary part of the elevated system, or did the authorities have in mind that they wanted to improve conditions in the street in respect to traffic? First of all, are you attempting to prove what happened before the Transit Commission?

Mr. Nichols: No, I am attempting to prove just the situation, the facts.

The Court: Irrespective of what took place before the Transit Commission?

Mr. Nichols: Absolutely.

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The Court: I will receive it.

Q. You are familiar with the matter of the removal of the 42nd Street spur from the time that the bill was drafted in 1917, the first bill? A. Yes.

Q. And that bill was drafted by Mr. Devery in your office, wasn't it? A. Mr. Devery, of the law department, at the request of the Borough President.

Q. That was done in your office, you recall that, don't you, Mr. Devery being up there one night? A. Yes.

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Q. And you have been familiar and followed the thing all the way along, because the Borough President was responsible for this improvement? A. Yes.

Q. Was it a City improvement? A. I should think so.

By the Court:

Q. What was the general situation in respect to traffic conditions? Go ahead and state what the Borough President had in mind, as far as his office was concerned? A. The roadway between Third Avenue and Park Avenue was obstructed by the elevated railroad columns, which seriously affected the movement of vehicular traffic.

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Q. Going along 42nd Street? A. Going along 42nd Street. As a city improvement, it was believed that there were other reasons for the removal of the structure.

By Mr. Nichols:

Q. Proceed and state the actual traffic conditions.

The Court: I think he has stated them.

Q. Let me ask you as to the fact of their being

2314 north of this spur station that has been taken down, a station of the Grand Central Railroad; is there? A. Yes.

Q. And that extends how far, cutting off all the east and west streets of the City at that point? A. It extends from 42nd Street to 45th Street, and cuts off 43rd and 44th Streets.

Q. Are you now engaged in extending the viaduct around the east side, over what was formerly Depew Place? A. Yes.

Q. So as to relieve the congestion at 42nd Street
2315 and Park Avenue? A. Yes.

Q. You prepared the plans for the Borough President in this street opening? A. Yes.

By the Court:

Q. Do you know what easements are? A. Yes, I think so.

By Mr. Nichols:

Q. South of 42nd Street, Mr. Schaeffer, Bryant Park in this section of the City, between Fifth Avenue and Sixth Avenue cuts 41st Street off, does it,
2316 so you cannot get through on 41st Street from Fifth Avenue to Sixth Avenue, because of Bryant Park? A. That is right.

Q. So then, between Bryant Park and the New York Central Station, in this section of the City from 40th Street to 45th Street, there are obstructions, leaving 42nd Street the only street through which you can get through right from the east to the west side of the City, that is right? A. Yes.

Q. Now, is the traffic on 42nd Street impeded or has it been impeded by the existence, under those circumstances of the columns of the elevated railroad? A. Did you say was it impeded?

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Q. Was the vehicular traffic through 42nd Street impeded by the columns of the elevated railroad under those circumstances? A. Yes.

Q. Did the City have counts made of the number of vehicles passing underneath the spur? A. I think those are available.

Q. Mr. Ryan did that, didn't he? A. Yes.

Q. And do you recall the figures, some 3,500 vehicles an hour going through at the time of the chief congestion? A. I do not recall the figures, but they are available.

Q. And that slowed up the quantity of traffic 2318
through 42nd Street, did it? A. Yes.

Q. Seriously? A. I should think so.

Q. And that street was the only street from 40th to 45th Street free for through east and west vehicular traffic? A. Yes.

Q. You have been widening streets in that vicinity, Lexington Avenue and Madison Avenue? A. Yes.

Q. Was it in your opinion essential to improve that developing traffic by widening of these other streets that the street surface available for vehicular traffic on 42nd Street should also be increased? 2319
A. Yes.

Q. And was there any other way it could be done, in your opinion as an engineer, except taking down these columns? A. Not to the same effect.

(At this point a recess was taken until 2 P. M.)

2320

AFTER RECESS.

Continuation of the direct examination of AMOS SCHAEFFER:

By Mr. Nichols:

Q. Mr. Schaeffer, please state the actual course of conditions of traffic in 42nd Street and the streets which are immediately connected with and contributory to that traffic? A. Did you say "course," or "cause"?

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Q. The course, the current of it, how the traffic develops and how it is taken care of in those streets? A. The crosstown traffic on 41st Street, for example being prevented to cross between 5th and 6th Avenue, would either have to go through 40th Street, or 42nd Street. Likewise, traffic in 43rd Street and 44th Street would have to use either 42nd Street or 45th, between Vanderbilt and Lexington Avenue, because those two opposite thoroughfares are closed.

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Q. At 40th Street, for instance, does the street have to go over the grade at Park Avenue, so as to get over the tunnel through which the street cars go? A. It does, but there is no extraordinary rise in the grade; it is a uniform and easy grade across.

Q. But there is a grade there that does not exist on 42nd Street, because 42nd Street crosses at the grade of the surface car tracks, while 40th goes above them? A. That is true, but it has no effect upon the traffic because the conditions at 39th Street, for example, would be the same as at 41st Street; that is, there is a uniform grade across town, but the grades of all streets are different; in some cases the elevation is higher, in others lower. I do not believe that the fact that there is a tunnel

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in Park Avenue has any effect upon the movement of traffic across town in those streets.

The Court: You cannot cross Park Avenue through 41st Street?

The Witness: Yes, you can, since the viaduct is built, and you can go under it. Prior to the viaduct, you could not.

The Court: You cannot cross between 5th and 6th Avenue because of the Public Library?

The Witness: That is right.

Q. The viaduct was opened up when? A. In April, 1919, I think.

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Q. And that was the building of a viaduct in the middle of Park Avenue; and how wide is Park Avenue? A. Park Avenue is 140 feet wide from building line to building line.

Q. So the sidewalks are twenty feet? A. Twenty or twenty-two; I am not sure.

Q. And the viaduct is about 40 feet feet wide? A. 42, I think.

Q. So that would leave 100 feet space on both sides together, and that is the width of 42nd Street itself? A. 42nd Street is 100 feet wide.

Q. So that after the viaduct was put there, taking care of the through traffic overhead, around the Grand Central, that left a space on both sides of the viaduct about equal to one-half the distance across 42nd Street, that is about the situation, isn't it? A. Yes, approximately.

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Q. North of 42nd Street, 45th Street, that has some grade to get over the tracks of the Grand Central, doesn't it? A. Yes.

Q. Does that have some effect, or has it any effect upon the traffic through there? A. That has very little effect on account of the kind of traffic that we have on our highways today.

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Q. That is, the automobile traffic surmounts the grade with comparative ease? A. Yes.

Q. But if there is any advantage, it is in 42nd Street, that has the flat grade? A. Yes.

Q. If you have anything else that determines the course of the current of traffic through 42nd Street and the adjacent streets, I wish you would give the record the benefit of your knowledge of that; as they come up through 3rd Avenue and try to get across town, the tendency is to move up to 42nd Street and go through there? A. I should

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say that the traffic in 41st Street would go through 42nd Street, and through 40th Street; that it would probably divide itself.

Q. Coming down from Lexington Avenue, the traffic—say going south, in the south part of the City—

Mr. LaMotte: I cannot see the point of all this examination. I object to it as incompetent, irrelevant and immaterial.

The Court: I will receive it.

Mr. LaMotte: Exception.

Q. Coming south on Lexington Avenue, how

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does the traffic handle itself in relation to 42nd Street? A. The traffic on Lexington Avenue going south would continue south unless it wanted to get into 42nd Street, in which event of course it would turn to the east or to the west. Traffic which can take other courses than these congested streets, such as 42nd Street, will usually do it. For example, southbound traffic on Lexington Avenue, which was bound for Broadway, for example, I doubt if that would go through 42nd Street, but it would probably go through, let us say, 47th Street, because that is a westbound street which

has considerably less traffic and less congestion than 42nd Street would have, or 45th.

Q. All those streets that you have mentioned—40th and 45th and 46th and 39th—they are 60 feet wide? A. Yes.

Q. And 42nd Street is 100 feet wide? A. Yes.

Q. So that the larger amount of traffic can get through 42nd Street? A. Yes, other things being equal.

Q. If the elevated columns were out of the way, that would loosen up the surface of a 100 feet wide street for the trucks and vehicles to work in and 2330
out? A. Yes.

Q. So, is the advantage of 100 foot unimpeded street in the movement of traffic greater or less in proportion to its width than a 60-foot street for instance? A. It is greater, if I understand your question; the amount of traffic which can use a wide street is relatively greater than the amount of traffic which can go through a narrow roadway.

Q. Have you made a study of that situation in reference to the proposed removals under the legislation which has been pending, of columns in 6th Avenue? A. Yes.

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Q. That was a bill of the Borough President? A. Yes.

Q. And that was adopted in reference to the traffic congestion of 6th Avenue?

Mr. LaMotte: I do not think it is right to go into that part of the case.

The Court: I think he has covered all that.

Q. Have you in this instance, arrived at any percentages, for instance, of the increased advantage of having traffic in a broad, 100 foot street, unimpeded with elevated railroad columns?

Mr. LaMotte: Objected to.

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The Court: Objection overruled.

Mr. LaMotte: Exception.

A. I don't think anybody could determine that. The only criterion that would be of any value there would be to make a comparison between the volume of traffic on 42nd Street, for example with the elevated columns in place, let us say, with a similar roadway of the same width, where there are no columns, and of course it would indicate that the clear roadway would carry more traffic, but there might be many other conditions which would

2333 contribute to that.

Q. Just as a comparison would be made in 42nd Street, now that the columns are down? A. Yes.

Q. Just like Mr. Ryan's count that was made before? A. Yes.

Q. Without asking you to express any percentages, as a problem that cannot be so exactly defined, but if you made an estimate—I don't want to commit you, but asking you to express it from the point of view of the City, as to the increase which would come to the capacity of a 100 foot street by taking down the columns? A. I would

2334 not like to give you any estimate of that; I do not think it would be fair for me to do it.

Q. Perhaps it would not, because we are taking an opposite position to you on the 6th Avenue proposition, but, in all fairness, I would be glad to have your opinion? A. There is no doubt that there would be an increase in capacity by the removal of the columns. How much, I do not think anybody can tell.

Cross examination by Mr. LaMotte:

Q. Is 47th Street a one-way street? A. 47th Street is a one-way street.

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Q. A street that they permit traffic to go from east to west on? A. Yes, from east to west.

Q. Using that street as a one-way street, that would accomodate as much traffic as a half of 42nd Street, wouldn't it? A. It probably would.

Q. In other words, using that street as a one-way street, it could be utilized to better advantage than using 42nd Street as a two-way street? A. It would be capable of carrying as much westbound traffic as 42nd Street.

Q. More than the traffic going one way, wouldn't it—42nd Street, as I understand, is a two-way traf- 2336
fic street? A. Yes.

Q. 47th Street is a one-way street? A. Yes.

Q. Now, taking the traffic that is going from east to west, wouldn't 42nd Street provide for more traffic than 47th Street does for one-way traffic? A. Your question is, does 47th Street—

Q. I am comparing 47th with 42nd Street, but I am perhaps a little mixed up in my question. 47th Street is a one-way street, taking passengers from east to west; 42nd Street is a two-way street, one line of passengers going east and another line goes west? A. Yes.

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Q. Would not 47th Street provide better passage for the passengers going from east to west than 42nd Street would, for the passengers going from east to west? A. I think not, so far as the absence of elevated columns on 42nd Street would be concerned. The surface railway tracks in any particular street, have a very material influence upon the volume of traffic which can use it, because vehicles get caught behind the trolley cars and have to stop whenever the trolley car stops, and a very large percentage of the area of the street occupied by trolley tracks is not available for vehicular traffic,

2338 so that with the same width of roadway, a roadway with car tracks will not carry as much traffic as one without, of the same width. There is another condition; the roadway of 42nd Street, I think is 66 feet; that would be 33 feet for one-half of it. The roadway of 47th Street, I think, is 34 feet. If it has been widened, it is now 34, but on 47th Street, the ordinances or the police regulations permit the parking of automobiles on both sides of the street, so that you only have a space for the free or the through movement of two lines of traffic on 47th

2339 Street. Now, the same regulation applies to 42nd Street as to parking. Therefore you have only two lines of vehicles parked on a 66 foot roadway, as against two lines on a 34 foot roadway, and furthermore, a roadway of 66 feet in width will carry more traffic, more than twice as much traffic as a roadway 34 feet wide, because assuming it was entirely clear, there is more elasticity for traffic to move in and out, and around.

Q. Have you made studies of traffic conditions in other streets besides 42nd Street? A. Oh, yes.

Q. Have you made traffic studies in 3rd Avenue? A. Yes.

2340 Q. In 9th Avenue? A. Yes.

Q. Is it not a fact that the elevated railroad columns in 3rd Avenue affect the course of traffic materially? A. Yes, sir.

Q. And likewise in 9th Avenue? A. Yes, sir.

Q. You don't know of any proposition on foot to do away with the 3rd Avenue L, do you? A. No.

Q. Or the 9th Avenue L? A. No.

Q. Why? A. I assume that the reason there is that while it would be very desirable to get rid of the elevated railroad columns, the structure is absolutely necessary to convey passengers.

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Q. And it is because the elevated railroad in these arteries of traffic north and south is absolutely necessary for the public use? A. Yes.

Q. Now, when you come to a case like the spur, it is a different proposition? A. Yes, sir.

Redirect examination by Mr. Nichols:

Q. You said you did not know of any movement in Third Avenue. You mean there is no official movement. You do know about the Third Avenue Association meetings in advocacy of a removal of the elevated railroad? A. Yes, there are move-

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ments constantly on foot for the removal of the elevated structures. The point, if I may elaborate it, is this: It is equally desirable to remove the elevated railroad columns from any street where congestion is heavy, and for that matter from any street whatsoever, but those things cannot be done. They cannot be removed unless other provision is made to carry the passenger traffic. In some cases, the two which have been mentioned today, the elevated railroad could be dispensed with so far as the carrying of passengers is concerned, and, therefore, as I understand it, it had to give way to the

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greater requirements for vehicular traffic.

Q. The spurs are not part of the trunk lines? A. No.

Q. Over on Sixth Avenue there, you do know about the Borough President's legislation to remove the Sixth Avenue Line? A. Yes.

Q. In contemplation of the possibility of another subway? A. Yes.

Q. That is a matter of legislation? A. Yes.

Q. And a report was sent in from your office to the Board of Estimate and Apportionment on that? A. Yes, but that contemplates providing other means for taking care of that traffic.

2344 *Claimants' Witness—Amos Schaeffer—Recross.*

Recross examination by Mr. LaMotte:

Q. As I understand, it is proposed to leave the elevated railroad stand until the subway is constructed? A. That probably would have to be done, but there is this about the act: It cannot be removed without the consent of the Transit Commission, which is the regulatory power for transportation.

By Mr. Nichols:

2345 Q. But it does provide that the elevated railroad should be removed, whether or not there is a new subway built, only it is not likely that it will be done until a subway is put in? A. Yes.

By Mr. LaMotte:

Q. But the authority to pass upon that is given to the Rapid Transit Commission? A. Yes, sir.

Mr. LaMotte: I offer in evidence a certificate of the Transit Commission in case No. 2704, made pursuant to Chapter 635 of the Laws of 1923. That is the Act under which we are proceeding here, certifying to what changes are made necessary by

2346 the removal of the 42nd Street spur.

The Court: So far as the Third Avenue station is concerned?

Mr. LaMotte: Yes, sir.

(Admitted in evidence and marked City's Exhibit 59.)

Mr. LaMotte: Yesterday I offered in evidence the order and determination in that proceeding, and the certificate issued under Section 53 of the Railroad Laws. This is merely to complete my proof on that point. That certificate provides for the erection of a stairway on the south side of 42nd Street. The certificate which was issued under the

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Transit Act, and had no connection with the spur, provided for the building of a stairway on the northeast portion of the station, so that by the two there are provided four stairways for the station at Third Avenue and 42nd Street.

Mr. Nichols: Is the opinion attached to that order?

Mr. LaMotte: I put in the order and determination and the two certificates. I have not got the opinion, but I have no objection to it.

Mr. Nichols: I want the record to state that the clerk has in his possession the order concerning the report of the Commissioners in respect to the appraisal, the easements of which were acquired by condemnation. That completes our proof.

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The Court: What order is this?

Mr. Nichols: The order concerning the report of the Commissioners in the condemnation proceedings.

Mr. LaMotte: I think in order to perfect that title, the report as well as the order concerning it to be put in evidence.

Mr. Nichols: I see no objection to that.

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Mr. LaMotte: Suppose we stipulate that all the proceedings and the report and the order shall be all considered in evidence in this case in that condemnation proceedings.

Mr. Nichols: That is for the purpose of referring to it, but not advising anybody to print it in the record.

The Court: What particular appraisal does this relate to?

Mr. Nichols: That is the Renwick property, 148 to 154.

2350 Mr. LaMotte: Is that understood now, that that is in evidence?

The Court: You mean the condemnation as to easements in respect to what property?

Mr. Nichols: In respect to property known as 148 to 154 East 42nd Street.

Mr. LaMotte: This, I understand, is part of their proof?

The Court: That will be considered in evidence as Claimants' Exhibit P.

Mr. Nichols: I think the title should go in evi-
2351 dence to identify the proceeding: "In the matter of the Petition of the New York Elevated Railroad Company relative to acquiring the title to certain real estate in the City and County of New York. (In *re* Woolsey, *et al.*)

Mr. Nichols: I have here the book which has been introduced in evidence in practically all of the easement cases, for the purpose of showing the franchise of the railroad. It is entitled "Statutes and Documents affecting the Elevated Railroads in the City of New York." I am offering that in evidence for the convenience of having it
2352 in in printed form.

Mr. LaMotte: Mark it for identification.

Mr. Nichols: I would offer it in evidence as far as it is pertinent to the franchises of the Manhattan Railway or its predecessors in title, in and to the spur and its operation.

Mr. LaMotte: Does it contain anything else except statutes?

Mr. Nichols: Statutes and documents. We may use any portion of that in the record on appeal, as counsel may require, but otherwise not to be printed on appeal.

Mr. Page: That is up to a certain date?

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Mr. Nichols: Yes, up to a certain date.

(Admitted in evidence and marked Claimants' Exhibit Q.)

JOHN C. BRACKENRIDGE, recalled for further examination, testified as follows:

Redirect examination by Mr. LaMotte:

Q. Mr. Brackenridge, on page 490 of the record in this case, on line 36 from the top, in answer to a question, you stated: "About 165 tons." What ought that to be? A. 65.

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Q. And the next question was: "Q. More than a quarter of it is columns?" Your answer was, "Yes." What ought that answer to have been?

Mr. Nichols: I don't want the witness to give different testimony.

Mr. LaMotte: No, not different.

Q. Does the fact that the number is 65 tons change the percentage? A. Yes.

Q. What ought it to be? A. It ought to be over 10 per cent. instead of over a quarter.

By Mr. Nichols:

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Q. That is, that your present testimony is that the 165 tons is only 10 per cent. of the weight of the entire structure? A. Yes, that was the structural steel.

Q. You are correcting an error in computation? Is that your understanding for the present change of testimony? A. Yes, there were 130,000 pounds of steel and in dividing it, I pointed off three places and divided by two, and got 65 tons, and for some reason I read 165.

Mr. LaMotte: Mr. Brackenridge's qualifications in this case were given in pages 458 to 466 of the record. I want to ask a few more questions.

2356 *City's Witness—John C. Brackenridge—Redirect.*

By Mr. LaMotte:

Q. You have stated on your qualifications heretofore given, that you were at one time chief engineer and general manager of the Brooklyn Rapid Transit system, is that correct? A. Yes.

Q. At that time, how large a railroad was it? A. Well, it was one of the largest railroads in the world of its kind.

Q. How was that railroad system formed? A. It was formed by the getting together of probably 28 or 30—

2357 Mr. Nichols: Is this relevant?

The Court: He is stating further qualifications.

The Witness: (continuing)—of 28 or 30 railroads, more or less.

Q. What did these railroads consist of, what kind? A. Steam surface railroads, steam elevated railroads, cable roads, car lines and electric trolley lines.

Q. In your position as chief engineer and as chief engineer and general manager of the Brooklyn Rapid Transit, did you make reports and recommendations on the various properties which

2358 were brought into that system? A. Yes.

Q. What was the nature of those reports and recommendations?

Mr. Nichols: What is the purpose of this re-examination?

Mr. LaMotte: To show what he has done in connection with this very valuation.

A. I reported on the physical value of the property, the money necessary to reconstruct and electrify it, the strategic value of that particular railroad as a part of the B. R. T. system. I also reported on the earnings, both present and future.

Q. And were your reports and recommendations

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used as a basis for the acquisition of those various lines into the Brooklyn Rapid Transit system? A. Yes.

Q. What was the combined capitalization of the Brooklyn Rapid Transit System at that time? A. Well, I don't remember exactly, but it was considerably over $100,000,000.

Q. In the unification of these various roads, did you have anything to do with the fixing of the rate of fare to be charged over the combined roads, in the allocation of the revenues? A. Yes.

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Q. Did the franchises of those various roads which were taken into the Brooklyn Rapid Transit System provide for varying conditions as to the rates of fare to be charged? A. Yes.

Q. Is it the practice among railroad men to allocate the revenues on the relative mileage travelled on each line? A. Yes.

Q. Have you determined or calculated the gross revenues, the operating expenses and the taxes of this spur? A. Yes.

Q. Will you state briefly the manner in which you determined the gross revenues assignable to the spur, and what that amount was? A. On November 21, 1923, a count was made by the Transit Commission of passengers entering and leaving the Park Avenue station, showing a total of 12,137 passengers, made up of 4,647 eastbound and 7,490 westbound. On the same day, destination cards were given out by the Transit Commission, of which 4,828 were returned properly filled out. These 4,828 travelled a total of 25,061 miles on the 3rd Avenue line, or 5.19 per passenger. To these, 5.19 miles, I added the .166 miles on the spur, and obtained an average length of ride of 5.356 miles, the ride on the spur being 3.09 per cent. of the total

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2362 ride, 12,137 passengers at 5 cents equals $606.85, and 3.09 per cent. equals $18.75 per day. $18.75 per day for three hundred days equals $5,825. 41 per cent. of the week-day travel on Sundays and holidays. 41 per cent. of $18.75 equals $7.70 for Sundays and holidays. $7.70 per day for 65 Sundays and holidays equals $500., making a total for the year of $6,125. I had other street railway operating revenues.

Q. State what they are? A. The total passenger revenue on the entire system was $17,424,198.55.

2363 In addition, there were other street railroad operating revenues of $1,771,213.89, or 10.1 per cent. more, and I call it ten per cent. It equals $613., making a total street railway operating revenue of $6,738.

Q. Have you determined the operating expenses and taxes assignable to the spur? A. Yes.

Q. Please state how you did it, and the amount so determined? A. The maintenance of way and structure, 70,170 car miles per year at $1.87 per car mile equals $1,312.18. Maintenance of equipment, 70,170 car miles at $2.28, $1,599.88. Operation of power plant, 70,170 miles, car miles, at

2364 $3.02, $2,119.13. Operation of cars, 300 days, at $80.40 equals $24,120. Operation of cars, 65 days, at $51.08 is $3,320., making a total of $27,440.20. Injuries and damages, 70,170 car miles at .04 cents, $280.68. General miscellaneous, 70,170 car miles at 1.01 cents, $708.72, making a total of $33,460.79. Taxes, 70,170 car miles, at 3.42 cents, $2,399.81, making a total operating expense and taxes of $35,861.

Q. Now the expenses of operating exceed the revenues by how much, according to your calculation? A. By $29,123.

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Q. Mr. Brackenridge, I show you a tabulated statement. The first page of this statement contains just what you have testified to? A. Yes, sir.

Q. Page 2 is the wages for the operation of cars in detail, isn't it? A. Page 22.

Q. Page 2, that is the second page? A. Yes.

Q. And the third page is what? A. Car miles on the 42nd Street elevated spur.

Q. The last two pages of this memorandum you did not use, is that correct? A. No, I did not use that; I used them simply to check up these 70,170 car miles.

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Q. That you took from a letter that Mr. Quackenbush sent to me? A. Yes.

Q. Instead of using your own calculations? A. No, I checked it up very closely.

Q. You made your calculations first, and then received the letter and used the information contained in the letter? A. Yes.

Mr. LaMotte: I offer this statement in evidence.

(Admitted in evidence and marked City's Exhibit 60.)

Q. Now, have you made a study of the course of travel on the rapid transit system, I mean on the Manhattan Railway System of the Rapid Transit System, as shown by the ticket sales at all the railroad stations in 42nd Street, including the elevated system? A. Yes.

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Q. Have you examined the City's Exhibit 43, showing the ticket sales from 1900 down to the present time on all the stations along 42nd Street? A. Yes.

Q. Have you examined the damage map in this proceeding in order to ascertain the area, that is the property which is located within the area of the damage? A. Yes.

2368 Q. Have you made an examination of the elevated railroad? A. Yes.

Q. You valued it from a structural standpoint already? A. Yes.

Q. Have you formed an opinion as to the fair value of the property, taken in this proceeding, considered as a railroad in operation?

Mr. Nichols: I object to the question as not corresponding to the facts, assuming a hypothesis of conditions which do not exist, and is immaterial, irrelevant, incompetent and improper.

2369 The Court: I do not understand that he assumed any state of facts yet. I will receive the answer, yes or no. He is calling for an opinion.

A. Yes.

Q. In estimating the value of the property taken in this proceeding, have you considered it in the same ownership as the entire Manhattan Elevated Railway? A. Yes.

Q. Have you also considered that it was a railroad in operation in connection with the operation of the entire Manhattan Elevated Railway System? A. Yes.

2370 Q. Have you assumed that the owners of this property have a perpetual franchise to maintain and operate an elevated railroad? A. Yes.

Q. Have you assumed that the owners of this property have the right to maintain certain elevated railroad structure and operate it as a railroad, free from interference or the right of interference from the City, the abutting property owners, or the world? A. Yes.

Q. What, in your opinion, was the value on December 7, 1923, of the said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances and all rights, easements and fran-

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chises of every nature whatsoever under which said elevated structure, tracks, stations, platforms, stairways and appurtenances were constructed and maintained, and also the right, easements and franchises to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances and the right to operate cars or trains thereon or thereover?

Mr. Nichols: I object to the question on the ground that the witness has not been shown to be qualified, or to have any knowledge whatever of the property involved in the question, which in- 2372
cludes franchises, and in the nature of the real estate and right of way of the company, as shown by the evidence before the Court, to have been acquired and to be owned by the Manhattan Railway Company pursuant to Court orders and by purchase; also that the witness is assuming a state of facts, in valuing the entire value and franchises of the railroad, contrary to the fact, and based upon a hypothesis, and as incompetent, irrelevant and immaterial.

The Court: This is the same question you put to the other witness?

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Mr. LaMotte: In a different form.

The Court: Does it vary, except as to the form?

Mr. LaMotte: That is all; I am going to ask another question in the same form after this is asked,—just the same thing, except that I have divided it up.

Mr. Roberts: On behalf of the Manhattan Elevated Railroad Company, I object to the question on the ground that the witness is not qualified, and that his opinion is not based on the facts, and is not evidence in this case.

The Court: I will receive it.

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Mr. Nichols: Exception.

Mr. Roberts: Exception.

Q. What is the answer? A. It has no value, except as scrap.

Q. Now, Mr. Brackenridge, assuming that the elevated railroad structure, tracks, stations, platforms, stairways and appurtenances now existing within the condemned area, known as the 42nd Street spur, and all rights, easements and franchises of every nature whatsoever, under which this elevated railroad structure, tracks, platforms,

2375 stairways and appurtenances were constructed and maintained and also the right, easements and franchises to further maintain said elevated railroad structure, tracks, platforms, stairways and appurtenances, and the right to operate cars or trains thereon or thereover were in the same ownership as the entire Manhattan Elevated Railway, and that it is operated as an elevated railroad in connection therewith and as a part thereof, and assume that the owners thereof have a perpetual franchise to operate said elevated railroad, and assume

2376 that the elevated structure, the stations, platforms, stairways and appurtenances are lawfully in the street, and that the owner or owners thereof have the right to maintain said structure and operate it as a railroad free from interference or right of interference from the City, the abutting property owners or the world, what, in your opinion, was the fair value on December 7th, 1923, of the said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances, and all rights, easements and franchises of every nature whatsoever under which said elevated structure, tracks, stations, platforms, stairways and

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appurtenances were constructed and maintained, and also the right, easements and franchises to further maintain said elevated railroad structure, tracks, stations, platforms, stairways and appurtenances and the right to operate cars or trains thereon or thereover?

Mr. Nichols: Same objection, more particularly on the ground that the witness is not shown to be qualified to pass any judgment upon the value, or express any opinion in respect thereto, and in respect to the easements included in the question of the counsel. Also that the assumptions are contrary to the facts in evidence, more particularly the possession of easements of great value, as shown by the adjudication of the Court in respect to many of them, and that it is based upon a hypothesis that is contrary to the facts, and speculative and incompetent and irrelevant.

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The Court: Same ruling.

Mr. Nichols: Exception.

Mr. Roberts: I object on the same grounds.

The Court: You may have the same objection and exception that you had heretofore.

A. Of no value except scrap value.

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Recross examination by Mr. Nichols:

Q. When did you prepare the statement that you have offered as to the earnings of the spur so-called? When did you prepare the testimony which you have just given?

Mr. LaMotte: May I ask the counsel to get nearer to the witness.

Q. When did you prepare this testimony? A. From October 10th last to date.

Q. More particularly the tabulation of the tes-

2380 timony; that corresponds to your testimony that you give orally, doesn't it? A. Yes.

Q. When did you prepare that? A. That was in the progress of construction during that period.

Q. When did you finish it? A. About a week or ten days ago.

Mr. Nichols: I might suggest that the counsel has had abundant opportunity to let us have that, so as to prepare for cross examination.

Mr. LaMotte: I might have done that, in view of the generosity of the railroad towards me.

2381 The Court: We had to adjourn to let you prepare for cross examination, and to let Mr. Nichols prepare.

Mr. LaMotte: It never occurred to me to do it, your Honor.

Mr. Nichols: I am taken by surprise, and it is rather complicated.

The Court: It is along the same lines, as I understand, as the testimony of the witness Bauer.

Q. It is just the same in principle, as the testimony of Dr. Bauer, isn't it? A. I would not say that; I have my own principles for making up

2382 estimates.

Q. I mean, one of Dr. Bauer's estimates? A. Which one?

Q. The one in which he gets the nearest result to your loss from the road—or aren't you familiar with Dr. Bauer's various methods? A. I am somewhat familiar with them, yes, but I have my own method.

The Court: How does the amount of your deficit compare with Dr. Bauer's?

The Witness: It is very much the same; as I understand, the only difference between Dr. Bauer and myself is caused by Dr. Bauer allowing 5 per

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cent. of the 5 cent fare, while I allowed the actual percentage as shown by the figures, which was 3.09 per cent. of the 5 cent fare allocated to the spur.

The Court: His deficits from the year 1919 to 1923 inclusive are in round numbers, about $24,000. They run between $23,550 up to $24,872. Yours appears to be about $29,123.

The Witness: $29,000, yes.

Q. His testimony before the Transit Commission allowed, according to his method, some $5,000—$5,400, as the revenue allocated to the spur, as against an expense, if I recall it, of $68,000. Now you agree about with his figure; according to that method, your allocation of revenue is about $5,400, as I recall it? A. No, I don't agree with you.

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Q. How much revenue did you allow? A. I allowed $6,000.

Q. That is only 10 per cent. difference? A. $6,738.

Q. That is a very slight difference, isn't it? A. Well, in actual money.

Q. But you did not agree with an expense of $68,000? Now, did you take car mileage applicable to the spur, as he did before the Transit Commission, by figuring that the average speed of the spur car was 3 miles an hour, as against an average on the road of 15 miles an hour, and then multiply that by four—not by five, but by four? A. No, I did not do that.

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Q. You are not familiar with that method? A. I have got the actual figures on the cost of the spur taken from Mr. Quackenbush's letter, and from your reports to the Transit Commission on the cost for the different items that go into making up the maintenance of equipment and operation of power plant, operation of cars and injuries

and damages and general miscellaneous, the percentage that you report to the Transit Commission based on the car mileage basis which is the car mileage furnished.

Q. Then you take the car mileage basis without any reference to the difference of speed on the main line and on what we call the spur? A. The speed did not enter into that computation because we had the payroll from Mr. Quackenbush, the cost per day.

Q. As far as car miles are concerned, you disre-
2387 garded the car miles in figuring the expense and took the actual facts? A. Took the actual facts.

Q. And labor cost was the larger part, of course? A. Yes.

Q. So the larger part of that is one taken from actual facts, and not the car miles as Dr. Bauer took them in his method before the Transit Commission, or perhaps you are not familiar with that method? A. No, I am not familiar with it.

Q. When you got your experience in the B. R. T., it was in valuing roads combined with the B. R. T. —steam surface roads and steam elevated roads,
2388 isn't that right? A. All sorts of property—steam roads, trolley car roads—

Q. You took them in line at one time or another, and then in connection with that, there was some determination of what they were worth? A. We had to make a pretty accurate determination.

Q. And you did not leave out the value of your rights of way, did you? A. Certainly not.

Q. And part of the right of way of steam elevated roads—was one of them in Fulton Street? A. The Kings County elevated was in Fulton Street.

Q. And part of the value of their right of way

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was the easements they had acquired? A. That was part of the cost and part of the value.

Q. Now, in answer to your hypothetical question about the value of this spur, you are quite familiar with the fact that the easements there were very expensive? A. Yes, sir.

Q. And you did not give any value to that in your answer, did you? A. No, but—

Q. That is all—you did not. Now, go back to the old B. R. T.—

The Court: In answering that hypothetical queston did you take into consideration that the easements had cost a certain sum of money?

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The Witness: Yes, sir, I know just what they cost.

The Court: You assumed that they cost a substantial sum, did you?

The Witness: Yes.

Q. When did you leave this interesting occupation of valuing the property acquired by the B. R. T.? A. For the B. R. T. about 1904 and 1905.

Q. That is when you left the B. R. T.? A. Yes.

Q. You were pretty careful to include all elements of value including easements and rights—you did not leave anything out? A. I tried not to.

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Q. You were there with the Kings County elevated when they acquired those easements in Fulton Street? A. Yes.

Q. And as the property became more valuable and was built up in Fulton Street, you had to pay for these easements in proportion? A. Yes.

Q. You remember acquiring the easements? A. Yes.

Q. Now, did you ever, in figuring on the value of scrap, or of railroads, have regard to the future? A. What they were going to make the scrap into?

2392 Q. No, the railroads; some of your railroads on the B. R. T., would you describe them as scrap? A. Yes, I would describe them as scrap.

Q. Some of the B. R. T. roads? A. Yes.

Q. But the ones you intended to operate, didn't you have regard, in your determination of value, to the possibilities of future development in Brooklyn? A. Where they had earning power, yes, but the scrap roads had no earning power, and we were glad to get the consent of the authorities to tear them down, and we did tear down a great

2393 many miles in Brooklyn and sell them for scrap.

Q. Did you ever tear down an elevated railroad out there in Brooklyn that served a district like East 42nd Street, in the City of New York, between 3rd Avenue and Park Avenue?

The Court: No, because there isn't such a street there.

A. We tore down the elevated alongside the Brooklyn Bridge from Fulton Ferry, which at one time was an important terminal in Brooklyn, and we tore them down on York Street and Park Avenue and Hudson Avenue.

2394 Q. I remember that ran down to the Fulton Ferry. The Fulton Ferry was suspended, was it not? A. Practically.

Q. Now, they have not discontinued the use of the Grand Central Railroad Station yet, have they? A. No, but they have discontinued the spur, which is in about the same category.

Q. You consider the line running down to a discontinued ferry over there in Brooklyn, underneath the Brooklyn Bridge, is similar to a spur running to a station in front of the Grand Central station in East 42nd Street? Do you consider those

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two similar? A. Similar in so much as they are both operated at a loss.

Q. That is your opinion about the loss, but I mean the actual conditions of traffic and the development of traffic? A. I think there is no future for the Fulton Ferry, and no future for the 42nd Street Elevated spur; that is my honest opinion.

Q. And you think the conditions were similar on the spur over there? How long was that spur running down—from somewhere around Court Street? A. It ran not nearly as far as Court Street. It ran from York Street, Sand Street down alongside the bridge to the ferry, and along York Street to Hudson Avenue, and up Hudson Avenue to the Park, and across over Myrtle Avenue—probably three or four miles of track.

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Q. Running to a discontinued ferry line as the terminal? A. It was not all torn down at once; it was torn down in two different slices.

Q. Let us come to some of those railroads that you bought during your management of the B. R. T. You did acquire some railroads that were not junk, didn't you? When you had charge of it, you acquired some that were not junk? A. They pretty nearly all were.

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Q. And that is the kind of railroad you were running up to 1904? A. No, that I was reconstructing and electrifying. A great many of them had gotten run down, but they were rehabilitated and electrified.

Q. Just mention one that you would not call junk over there, that was acquired by the B. R. T. system? A. I would not call the Brooklyn Elevated Railroad junk.

Q. When did you acquire that? A. About 1889—about that.

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Q. And that was about three years after it was open for operation? A. No, it was opened in 1885.

Q. That was one of the earlier ones? A. Yes.

Q. It had been in operation four years when you acquired it? A. No, 14 years.

Q. Then you acquired it in 1890? A. Yes, about.

Q. When you acquired the Brooklyn Elevated Railroad, did you or did you not undertake an estimate of the probable future earnings and traffic of that line? A. Yes, sir, that was the greatest

2399 battle of my life, on that estimate.

Q. Don't make a battle of it, but answer my question—you did? A. Yes.

Q. And you consider that in buying railroads, you have to have regard for the possibilities of the development of travel? A. Yes.

Q. You say the whole thing was practically junk at that time, but it was rehabilitated? A. I did not say the Brooklyn Elevated was.

Q. But everything but that? A. No, I did not say everything but that.

Q. Now, mention another one that was not junk?

2400 A. The Kings County was not.

Q. Now, the Kings County. When did you acquire that? A. About the same time, or a little after we did the Brooklyn Elevated.

Q. That is about 1899? A. 1899 or 1900.

Q. Kind of a sad time for elevated railroads, was it not? A. Sad?

Q. Sad, yes? A. It was not sad; we were full of activity there at that time.

Q. You have described most of these properties as junk, and you get two that you say were not. Now, don't you know that during the decade from 1890 to 1899 the surface lines in the City of New

York increased their traffic very greatly? A. Yes, that was due to the electrification of the roads.

Q. And taking the elevated railway lines in Manhattan—you have seen the figures on the charts? A. Yes, sir.

Q. An actual decrease in that decade? A. Yes.

The Court: A decrease?

Mr. Nichols: All the elevated lines decreased during that entire period.

Q. Is that true? A. I don't remember whether it is or not; I was attending to the Brooklyn end of it, and from my recollection I would say that it 2402
did not in Brooklyn.

Q. They were electrifying the surface lines there, competing with the Kings County and the Brooklyn Elevated? A. We were the pioneers in that work.

Q. And Brooklyn is famous for its street surface electric railways—the street lines there, they have been very active in developing Brooklyn? A. Yes.

Q. Very important today, aren't they? A. Yes, sir.

Q. And they were during this period when they were being electrified and competing with the elevated lines? Now, just to test your recollection 2403
during this time, do you recall in that period, 1890 to 1900 that period of electrification, that the traffic of the surface lines in the City of New York, increased 86 per cent.—that is, 186 per cent.? A. I know that there was a very great increase on the surface lines, and that is what made it necessary for the elevated railroads, which were under separate management at that time, to go to electricity. Now, the cost—whether the elevated railroad could stand the additional fixed charges that they would be burdened with if they went to electricity, was a very serious question, and that is the one I had to decide.

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Q. It was serious, it was as the result of that competition of the surface lines and the necessity of meeting it, that the elevated railroads were in a trying situation? A. They went into receivership.

Q. I know that. When did you tear down that appendage running down underneath the Brooklyn Bridge to the discontinued ferry? What was the year you began to tear it down? A. About 1904.

Q. You did not electrify that? A. Oh, yes, that was electrified.

Q. Did you advise the electrification of that ap-

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pendage? A. At that time, yes.

Q. When was it electrified? A. About 1899—1898 and 1899, somewhere about that.

Q. 1899? I would like to test your recollection on that point? A. It went into the Greater New York in 1897 and 1898.

Q. It was not electrified then? A. No, but it was electrified the next year, and we were studying the electrification at that time, and when we got the electric trolley cars across the Brooklyn Bridge, that was the last blow that killed the elevated railroads and put them in the hands of a receiver, and

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we bought them; that was in '98.

Q. The Brooklyn Bridge was opened up—I mean the surface lines across that were electrified? A. Yes.

Q. And in '99, as you recall it, you electrified this branch running down underneath the bridge? A. We started in to electrify the different lines of the elevated railroads and that was amongst them.

Q. And five years afterwards, was it on your advice that it was torn down? A. I think so, yes.

Q. And it was on your advice that it was electrified 5 years before? A. Yes.

Q. And when did the ferry discontinue? A. That I don't know.

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Q. Wasn't that the determining factor? A. No, it was the traffic that determined it. It got so unprofitable that we decided to tear down the structure and abandon the railroad, and we were glad to get permission to do it.

Q. Now, the traffic determines everything, doesn't it? A. Yes.

Q. A railroad is just like a man; it is the one factor that creates the business that counts? A. Yes, sir.

Q. If you have a station that collects the business, that is the important thing? A. Yes.

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Q. And if you have a little transfer switch runing over the station, you don't value it at the value of the station from its contributive value to the railroad by the car miles that you run on this little transfer switch? A. No, you value it by the passengers.

Q. You would not value the tracks run there to the Grand Central, 1,000 feet of them, or .166 of a mile as you testified is the length of the spur, you would not value that on the basis of the car miles running over it, in its relation to the earnings of the system? A. Certainly.

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Q. You gave your experience, from what you testified to, with the lines in Brooklyn up to 1904. I ask you, do you know now what the earnings of the New York Central are, for instance? A. No, not offhand.

Q. Just to get an approximation of it, suppose the earnings of the New York Central Railroad were $64,000,000 net earnings last year and the mileage was 17,000 miles and the net earnings per mile were a trifle under $4,000, per mile, would that be about right? A. I would not answer that offhand.

2410 Q. Well, you are not in the railroad business now, but assuming it was that, then a portion of that track, 1,000 feet long, one-fifth of a mile, would be one-fifth of $4,000, and that would be a loss of $800 a mile, if that portion of the New York Central were cut off, that would be right, assuming the correctness of my figures? A. Not at all; it is not a parallel case to the 42nd Street spur.

Q. Isn't it in both cases the same principle that the United States Interstate Commerce Commission has passed upon over and over again in its
2411 practice, the value that should be apportioned to a developing element of the railroad, whether you call it a switch or a branch or a spur or a transfer facility? Isn't the principle the same, that to cut off a station by removing a small section of the track, less than 1,000 feet in length, it is not to be measured by the length of the connecting track which you cut off? A. It is to be measured by deciding as to whether it is a profitable station or whether it is not.

Q. We are trying to find out whether it is profitable or not, but you don't find that out by apportioning
2412 its earnings with the track that connects it to the main track? A. That is the way I did it.

Q. In what case did you do it? A. In this case.

Q. In practical railroad experience, do you know of a single instance in the Interstate Commerce Commission's rulings laid down for constructing mileage of branch, spur, tracks, connections and switches and so forth, that ever adopted that method? A. It is not material in this case. If you give the spur the whole 5 cents, you don't make any profit out of it.

The Court: In answering your hypothetical question, what value, if any, did you give to the easements here?

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The Witness: None at all.

The Court: You assumed the railroad did not own them?

The Witness: No, I assumed they formed part of a license to transact an unprofitable business, and it was the railroad as a whole, part of the Manhattan system, that I consider unprofitable and better off without, and the easements simply form a part of the license to operate that as a road, the same as a franchise or certificate of convenience and necessity are. I put it in the same category as I would those.

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By Mr. LaMotte:

Q. In other words, you have considered that the railroad by the payment of the damages to abutting owners, obtained the right to maintain and operate their structure for railroad purposes and you have included that in your valuation? A. Certainly.

The Court: Where are these easements now? What do you assume in respect to that—as to the abutting owners?

The Witness: I should think that they had ceased with the railroad.

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The Court: As soon as the railroad is taken away, the easements are there, and the light, air and access is restored there as it was before the railroad was built. You assume they were restored to the abutting owners?

The Witness: Yes, so far as they were occupied by the structure in the street.

Q. In making your estimate of the value of this spur, you have considered that the railroad had a right to keep the structure in the street and maintain it as a railroad as against the abutting prop-

2416 erty owners, as well as the City and the world? A. Yes.

Q. You have, as I understand it, considered that the damages that the railroad paid to the abutting owners were for the purpose of buying the privilege to continue to maintain and operate the structure as a railroad?

Mr. Nichols: I object to this. This is a purely legal question that he is asking the witness. He is not qualified as yet to pass upon the law in this case.

2417 The Court: Perhaps I am at fault. I began by questioning him along those lines. It has already been covered.

Q. In estimating the value of this spur, have you or have you not taken into consideration the possible future earnings? A. Yes.

The Court: You assume, of course, that there will be this continued deficit, I suppose, for the future?

The Witness: Yes, your Honor.

Q. You were asked about tearing down certain railroads in Brooklyn. Did you get permission to

2418 do that by an act of the Legislature? A. From the State Legislature.

Q. And wasn't the taking down of these railroads by the Rapid Transit Company, a voluntary act of the railroad? A. Yes.

Q. And it was done on account of the railroad being unprofitable, is that correct—the railroad was unprofitable? A. Yes, unprofitable; that is why it was done.

Q. In my question to you, I asked you to consider this spur as a part of the Manhattan system and operated as a part of the Manhattan system. Would it may any difference in your estimate if

you considered that it was also leased to the Interborough and operated by the Interborough system? A. No.

The Court: Did this witness have sufficient knowledge of the system in connection with that question? Does it appear that he knew what it consists of?

Mr. LaMotte: He said he knows about it.

Q. You are familiar with the Manhattan system, aren't you? A. Yes, I have been familiar with it for 40 years.

Q. And the Interborough system? A. Yes. 2420

Q. And you are familiar with how those roads are operated generally? A. Yes.

By Mr. Nichols:

Q. The Manhattan Railroad has been a profitable railroad during the 40 years you have known it? Or don't you know? A. It has been profitable up to within the last few years, since the Interborough claims—

Q. I am asking whether or not it is a fact that the Manhattan Elevated Railroad has been a profitable system ever since the day it started to 2421
run as the Manhattan road? A. Most of the time it has.

Q. Name one year when it was not? A. And it should have been all the time.

Q. But even in your opinion, it should be a profitable road all the time? A. It should have been a profitable railroad ever since it was built, but there have been certain areas within the past few years when they have claimed they were operating it as a loss.

Q. The Court asked you whether you had knowl-

2422 edge of the Manhattan Railway. Now, I am asking you not what people claimed about it, but whether as a fact, yes or no, it has been profitable during its entire operation? A. I will say yes, it has been profitable.

By Mr. LaMotte:

Q. Do you know what the reports to the Transit Commission, the reports of the Interborough Rapid Transit Company to the Public Service Commission and the Transit Commission show, as to the
2423 cost of carrying a passenger? A. Yes.

Q. Is that figured out per passenger—the average passenger carried? A. Yes, cents per passenger.

Q. How much of the five cents that is paid to the company, as stated in their reports, is consumed by the cost of carrying the passenger?

Mr. Nichols: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Nichols: Exception.

A. It costs about 4½ or 4.4 cents to carry the
2424 passenger. What is left is profit, net.

Q. Now, assuming that the passengers on the spur would increase even up to the extent that it is claimed for it by Mr. Burpee for the next three or four years, would, under those conditions, the spur, the revenue gotten from the spur, equal the cost of operation?

The Court: Do you know what Mr. Burpee has claimed?

The Witness: Yes, sir.

The Court: You looked over those figures and were here when he testified?

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The Witness: Yes, he claimed the passengers—one-way—2,400,000 passengers at the end of 1928.

Q. One-way? A. Yes.

Q. Assuming the correctness of that, would it in your opinion pay to operate the spur? A. No.

By Mr. Nichols:

Q. Based upon your method of calculation, it never did pay, or never could pay, is that right? A. I doubt if it ever paid.

Q. Have you an opinion? A. I will say now that it never did pay.

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Q. And never could pay? A. Never could pay.

Q. And it ought never to have been made a connection at that point? A. No, they should have never made that connection.

Q. They should have stayed in Third Avenue and not have built this development station at Park Avenue? A. It was all right until they extended the elevated up Third Avenue but then its usefulness ceased; it should never have been built.

The Court: Take the Lenox Avenue, east side branch of the subway, running up Jerome Avenue, above the stop at the Yankee Stadium. That line, from that point uptown, does not pay at the present time, does it?

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The Witness: I would not be sure about that.

The Court: It is my understanding.

The Witness: Very likely it does not. You mean, the one that only runs on Sundays and holidays?

The Court: No, I think they run it all the time, but I understand that end of the subway route does not pay. Aren't there certain portions of all

2428 railroads that when considered in and by themselves, do not pay?

The Witness: Yes, your Honor, almost every railroad has that.

Q. And yet they have to build them, in order to have the railroad as a successful operating unit, isn't that it? A. Not always, no.

The Court: Isn't it a generally recognized situation in the railroad business that in order to complete their line or route, it necessarily will result in certain portions of the line not paying, but that

2429 the whole line will be a paying proposition, and that there are certain branches from the main line that have to be run simply as feeders to the main line, but that the system has to be considered as a whole?

The Witness: When the 3rd Avenue railroad was built in 1878, the 42nd Street depot station was the objective point, and they ran through trains from the ferry to 42nd Street station.

The Court: That is what I understand to be the fact during 1878, and they discontinued during the next year.

2430 The Witness: And then it was part of the main line, and necessary and could be considered a profitable railroad, but as soon as it become a spur of the 3rd Avenue road and the Third Avenue road extended north on 3rd Avenue, then the spur's usefulness ceased, and they would have been better off if they had torn it down then.

Q. Do I get your view, that it would have been part of a wise management and have been desirable never to have made a connection with the Grand Central Station, just because in your opinion it would not pay or might just skin through at that time? A. It is always better in building

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transit lines, to build them straight, direct, and get through as much territory as you can. A dead-end like the spur on 42nd Street is bad railroad practice in my judgment.

Q. You like a single line railroad, running through the country without any branches? A. Just as far as possible, making it the shortest line possible.

Q. Do you know a single large trunk line in this country that could possibly earn its operating expenses if it did not have branch lines—they have got to have a certain—

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Mr. LaMotte: Let him answer.

A. It depends; you are speaking of passenger lines?

Q. Passenger lines have to have revenue. Now, you know that no railroad can operate unless it acquired a certain density of traffic? A. Yes.

Q. Up to a certain point with all the traffic you can get, the revenue only equals the fixed and unescapable constant costs. Up to that time it costs the full 5 cents, if that be the fare, but you have got to, some way or other, by branch lines of switches, or transfer facilities, get that density of traffic above the point where the traffic is only sufficient to take care of the cost of maintaining the system, and when you come above that line, there is the profit? A. Yes.

2433

Q. And when you knock off that part of the line, you are taking the cream off the bottle, as far as the profit is concerned? A. You never got cream on 42nd Street.

Q. But taking off any portion of the contributing traffic of any line, is taking off some of the top? A. It doesn't contribute enough.

2434 Q. But as far as it goes, the principle is the same? A. No, it is not.

Redirect examination by Mr. LaMotte:

Q. You have been asked by Mr. Nichols and by the Court in respect to the easements. We don't want any mistake about it. Have you considered, or have you not what the railroad calls easements, and that you call the right to maintain the structure in the street, free from interference on the part of the abutting property owners? A. And operated

2435 as a railroad.

Q. Don't misunderstand me? A. I understand.

Q. And you have calculated that in your valuation? A. Yes.

The Court: That is all the testimony we have so far, I understand. Will there be any other witness here?

Mr. LaMotte: I have been considering as to whether it would not be advisable, in view of the cross examination of Mr. Bauer and the cross examination of Mr. Schaeffer, to put in evidence the testimony taken before the Public Service Commis-

2436 sion in this case on the inquiry as to the necessity for the maintenance of this spur as a railroad.

The Court: Is it necessary to put in all that evidence? Cannot you put a statement, or cannot you agree upon the substance of the facts that were presented to the Commission, bearing upon the fact as to whether or not this railroad was no longer necessary?

Mr. LaMotte: That is not the point. The purpose of Mr. Nichols' cross examination of Dr. Bauer was, of course, to discredit him. He picked out things here and things there, and I think it is clear enough, anyway, but it seems to me it would be

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well to introduce in evidence at least the testimony of Dr. Bauer.

The Court: Is there any objection to letting the whole testimony go in?

Mr. Nichols: It is rather unusual, but if you have not got time to read this evidence, why didn't you—I think it is an imposition on his Honor to take all that in.

The Court: I won't take it all, I will take just the testimony of Dr. Bauer on his cross examination.

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Mr. LaMotte: Mr. Nichols offered in evidence a whole volume of Acts.

Mr. Nichols: I made it specific, that only those should be used which counsel might deem necessary.

The Court: The only purpose for which the testimony of Dr. Bauer would be received, would be for the purpose of explaining anything that was brought out on his cross examination affecting his credibility or otherwise.

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Mr. LaMotte: There is another thing I want to offer in evidence, and that is these condemnation proceedings. I have the date of the entry of the order, but I have not got the papers; I have not located them. I have not had a chance.

The Court: You may put those in.

Mr. LaMotte: If they may be considered—the whole report and the testimony upon which it is based, may be considered in evidence without my producing it, I would be very glad. If it has got to be produced, I will have to hunt it up.

The Court: Let it be deemed in evidence, and either party may refer to it if necessary.

Mr. Nichols: Oh, yes, certainly.

The Court: The proceedings in condemnation

2440 upon which the Exhibit P was made, may be deemed in evidence.

Mr. Nichols: Does that include the testimony taken before the Commissioners?

The Court: No, we will have enough testimony in this case. This will be deemed in evidence as the City's Exhibit 61.

Mr. Nichols: What is 61?

The Court: The proceedings in condemnation, on which Exhibit P was made may be considered in evidence as Exhibit 61, but it excludes the

2441 testimony.

(Whereupon an adjournment was taken to Monday, June 16, 1294, at 10 A. M.)

New York, June 16th, 1924.

Trial Resumed.

Mr. Murray: May it please the Court, I hand up proof of claim of the Equitable Trust Company, second mortgagee, and if your Honor will be good enough to endorse on it an order that it

2442 be filed. Of course the formal time has expired some time ago. When I was here a week ago, I happened to mention then that I would file it tomorrow, but I didn't file it tomorrow, I really hadn't the time—

Mr. LaMotte: No objection.

Mr. Murray: We file with this a copy of the mortgage.

Mr. LaMotte: It is just the claim.

Mr. Murray: Proof of claim.

The Court: What exhibit will that be?

Mr. LaMotte: It is usually marked just "filed."

(Adjourned to Monday, June 23, 1924 at 10 A. M.)

New York, June 23, 1924.

Trial Resumed.

The claimant Interborough Rapid Transit Company appeared by counsel and made application for an adjournment, which application was opposed by counsel for The City of New York.

The Court granted the application of the claimant Interborough Rapid Transit Company for an adjournment and adjourned the matter to November 6, 1924.

2444

New York, November 6, 1924.

Trial Resumed.

Appearances: George P. Nicholson, Esq., Corporation Counsel, by L. Howell LaMotte, Esq., Assistant Corporation Counsel. James L. Quackenbush, Esq., Attorney for Interborough Railroad Company, by J. Osgood Nichols, Esq., of counsel. Murray, Aldrich & Roberts, Esqs., Attorneys for Manhattan Railway Company, by William D. Embree, Esq., of counsel. William H. Page, Esq., Attorney and counsel for 42nd Street Association. 2445
Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Co., by Andrew Macrery, Esq., of counsel.

FREDERICK WILLIAM SCHOONMAKER, called as a witness in behalf of the claimants, the Manhattan and Interborough Companies, having been duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. Where is your place of business? A. No. 70 East 42nd Street.

Q. What is the nature of your business? A. Retail druggist and pharmacist.

2446 Q. How long have you been in business on 42nd Street? A. If I live to the 5th of February, I will be on 42nd Street fifty years.

Q. What was your first location? A. My first location was a store where the Commodore Hotel stands now. A small store put up by Frederick Branis, a little store, No. 117 East 42nd Street.

Q. That was prior to the erection of the elevated railroad? A. Four years prior to the erection of the elevated structure.

Q. Where was your business after that? A. I
2447 took the corner of 42nd Street and Park Avenue, after that; and I was there for twenty-six years.

Q. For twenty-six years at the corner of Park Avenue and 42nd Street? A. Yes.

Q. And then you were on the line of the elevated railroad for some time? A. Yes, just a little above the elevated railroad—my first store was underneath the elevated railroad.

Q. So that you have been continuously in business in 42nd Street in the vicinity of Park Avenue both on and off the line of the elevated railroad? A. Yes.

2448 Q. Are you the author of a book relative to 42nd Street and its history? A. I must say that I am the author of a book on 42nd Street.

Q. I want you to state briefly what was the condition of 42nd Street at that point and on the line of the spur at the time the elevated railroad came there?

Mr. LaMotte: Objected to as incompetent, irrelevant and immaterial. The point here is as to the value of the property in the line of 42nd Street on the date the title vested. We are not concerned with conditions that existed there forty-two years ago.

The Court: What is the purpose of this?

Mr. Nichols: The purpose is to render intelligible for the record—we are all familiar with 42nd Street—but for the record, a history of the condition of 42nd Street at the time that the awards were made, and we acquired our easement. They are in evidence and they were placed in evidence as the title to our property and the consideration is stated, and it is a mode of determination—which is very valuable to us—determining the value of the easements, and comparing the value of the easements as determined by the judi- 2450
cial decisions at the time with the value of the property and thereby getting a ratio which we apply in the light of the conditions as far as possible, and I want to have it in the record for such aid to the Court as it may be to throw light on the condition which existed at that time.

The Court: In other words, you seek by this to show the enhancement of the value of the easements?

Mr. Nichols: Yes, and more than that. The conditions of the street and the operation of the road, and that must be spread on the record in 2451
order to determine the exact significance and weight to be accredited to those awards made for these different easements at that time. Otherwise the record would show nothing as to what 42nd Street was. We all know that there have been very great changes in value and conditions there, and I want to show them briefly and yet sufficiently.

Mr. LaMotte: Of course, if that is the purpose of it the question then must assume that they own easements of light, air and access in 42nd Street, separate and apart from this railroad, which are

taken in this proceeding in addition to the railroad. Of course, the City's contention has been made clear.

The Court: Yes; it has been made clear right from the beginning.

Mr. LaMotte: I want to spread my objection upon the record in this case: That the railroad does not own the easements of light, air and access in 42nd Street, which formerly belonged to the abutting owners. These easements are incapable of ownership separate and apart from the abutting
2453 property. The railroad in the erection of its structure in 42nd Street extinguished such easements of light, air and access to the extent that the structure occupied the street and by the payment of damages to the abutting property owners in settlement of the injunction suits in some cases, and by condemnation in others, and by prescription in still others, it acquired the right to maintain its structure in the streets, operate it as a railroad, and to continue to extinguish the easements by so doing during the life of its franchise free from interference or the right of interference on the part of
2454 the abutting owners.

All that the company owns in 42nd Street, and all that is taken in this proceeding are the franchises obtained from the State and the City, the elevated structure erected in the street by the company, and the right to maintain the structure and operate it as a railroad pending the life of its franchise free from interference or the right of interference on the part of the abutting property owners. These taken together constitute a legal railroad. Without the franchise there would be no railroad. With the franchise and the structure but without the right to maintain it in the street as

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against the abutting property owners there would be no railroad. All three are necessary to constitute and make a railroad. That is all that this company owns in 42nd Street, and all that is taken is a railroad. Whatever that is worth as a part of an elevated railroad system in operation either for the purpose of sale as a railroad, to lease as a railroad, or to operate, this company is entitled to be paid in this proceeding, and no more.

That is our first objection to this line of testimony. I will go a step further: If the railroad owns easements of light, air and access inde- 2456
pendent of its railroad, which it has claimed to do, then this method of proof is absolutely irrelevant, incompetent and immaterial. The only question then would be what, in the opinion of a competent expert, capable of passing upon those questions, what those easements would be worth at the time the title vested. If you open the door to this line of testimony you can go all over creation and get the opinion of every layman as to conditions.

The Court: I understand that this witness is simply going to testify to this change in condition of 42nd Street from the date of the erection of the 2457
structure until the present time?

Mr. Nichols: Yes, and that was done in all these cases away back to 1873, and I am only following the course that has been universally followed in these cases.

Mr. LaMotte: I make the further objection that then this is the first step in the method or intention of a railroad to claim money because of benefits that result to abutting property by reason of acquisition and taking down the structure. I say that we are not concerned with the abutting property in any way. No part of the abutting property

2458 is taken in this proceeding. All that is taken is within the lines of 42nd Street. The effect of the acquisition of this railroad and its removal upon the value of the abutting property is absolutely immaterial in this case. If there is one thing in condemnation law that has been settled, it is that in estimating the damage for property taken in such a proceeding as this you cannot take into consideration the benefits that result to the property to be assessed either for the purpose of increasing the damages, or diminishing the damages.

2459 The only question before the Court today is the value of the company's property within the line of 42nd Street on the date that it vested in the City of New York.

The Court: Mr. LaMotte, in taking this testimony I am not indicating my opinion that it is the proper measure of damages. My mind on that is open. As I indicated at the outset of this proceeding I think the proper way to do is to take the testimony offered on the theory presented by the City and that presented by the other side. This is the first of these cases that has ever been tried, and it is a novel question. We do not know

2460 how the Court of Appeals will finally look at it. They laid down new law when they allowed damages for light, air and access. Then they went further than the courts had ever gone before. As to what the ultimate view of the Court of Appeals will finally be of this litigation, it will be a forerunner of, I assume, hundreds of cases of this kind. I do not think it would be a wise thing at this stage of the proceedings to shut out this evidence even though I may be at the present time convinced that it is not the proper measure of damages that I shall adopt. I believe in taking it

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and having you protected in every way. I am frank to say that I cannot see my way clear at this time to adopt this measure of damages. When I come to make my decision I may not adopt it, but I think the only practical question that is presented here is as to the amount of time that will be required to take this testimony. Let us consider for a moment the situation. It would be very unfortunate not to have this testimony spread upon the record and then have the higher court rule that it ought to have been admitted for some purpose and that the Court ought to be apprized as to the value of the abutting property with and without these easements. I do not know what view the Appellate Courts will take, and in order to be absolutely safe I shall take this proof.

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Mr. LaMotte: It is like running a ship without a rudder. I cannot see for what purpose this testimony may be used.

The Court: As I take it he is going to attempt to show a change in conditions in the surrounding property.

Mr. LaMotte: It is only admissible for one purpose. It is not admissible at all to determine what it was worth in 1924. It can only be admitted for one purpose, and that is to show the benefit that might result to the property by reason of the removal of the structure.

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The Court: Let us assume that that is so. I think I shall take it. It is simply a question of how much time you will take.

Mr. LaMotte: Suppose it is offered for the purpose of showing what it would cost on the date title vested to reproduce this structure. In other words, suppose the purpose of it is to show what these people would have to pay to these abutting

2464 owners if they erected the structure as a part of the cost of reproduction, then I shall have to protect my record, and if it is offered for that purpose there is no foundation laid for it. There is not a scintilla of evidence in the case which would show that a man of reasonable prudence would purchase this structure and railroad at the present time. In fact, the testimony is that the railroad is not paying operating expenses and the company is better off without it than with it.

The Court: There is no evidence here to show
2465 that a reasonable man would purchase this, but there is evidence tending to show on the part of the claimant that it was a benefit rather than a detriment to its whole system.

Mr. LaMotte: It seems to me that if your Honor is going to open the door to this line of testimony it ought to be confined to the date of the acquisition. If we are going back fifty years—

The Court: It must eventually be confined to the date of the acquisition.

Mr. Nichols: That is my purpose, to show the condition at the time we acquired these easements.

Mr. LaMotte: The question is if you have any
2466 easements what they would be worth at the time we took them?

Mr. Nichols: I am not apologizing for this line of proof.

Mr. LaMotte: Exception.

The Court: This is new ground, and I am not certain about it, and I think it is safer to have the evidence in, and I will receive it.

Mr. LaMotte: Exception.

Q. His Honor wants us to be brief, and I do not want to keep you but a few minutes, and I will ask you but a few questions. What did you ob-

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serve as to 42nd Street at the time this spur was built as to means of transportation?

Mr. LaMotte: It is understood all my objections apply to all these questions?

The Court: Yes.

Q. When the railroad came there in 1878? A. I landed in New York four years before the elevated was put up, and the stores at 42nd Street were in a very primitive condition. We wondered why they called that the Grand Central Station, and why they built the depot there.

2468

Q. That was at the time the elevated railroad was first built? A. The elevated was put up four years after that.

Q. At what time? A. 1878, as my memory goes.

Q. What was the condition of 42nd Street between Third Avenue and Park Avenue at that time,—the improvements? Start at one end of the street and go down quickly? A. I can start at the place in the street where my little store was, and there were a couple of markets on each side, all shed stores, and a hotel opposite; and there was a manufacturing store at the corner of Lexington Avenue and 42nd Street.

2469

Q. What did they manufacture? A. Chairs.

Q. Southeast corner? A. Yes.

Q. Down towards Third Avenue, the rest of the block? A. Down Third Avenue was rather primitive,—a few stores. There were two or three little hotels, of minor degree, and a dumbwaiter establishment at 42nd Street, and down below there there was a lady who kept goats.

Q. Was there a stable on the street, Westcott's Express? A. No, that was afterwards.

By the Court:

Q. Were those one or two story buildings? What

2470 kind were they? A. Two, three and four stories, and hotels, two or three.

By Mr. Nichols:

Q. What means of transportation was there at the time the elevated railroad came? A. The only means of transportation was the Fourth Avenue car and Madison Avenue line; that was started in a primitive way, and the Avenue C started at the corner of Park Avenue and 42nd Street, underneath the elevated about that time. Those were
2471 primitive conditions.

Q. What was the next improvement in transportation, if anything, up to the time the first subway was built in 1904? A. Lexington Avenue cars—I mean the 42nd Street cars ran down Lexington Avenue.

Q. When did that come? A. As far as I recall that came along about in 1879.

Q. Was there anything else until the first subway came besides the elevated railroad? A. No.

Q. Did the street continue in about that condition? A. Yes.

Q. That is, for the next fifteen years after the
2472 railroad was built? A. I gave up that store and went across to the Belmont store and 42nd Street was paved and began to progress, and many improvements have been made up there since.

Q. When did the improvements start in? A. The improvements started, began to start about 1880.

Q. How was the sidewalk at that time between Park Avenue and Third Avenue? A. The sidewalk was not very much.

Q. When were the Third Avenue stables on the south side of 42nd Street between Park and Lex-

2473

ington Avenues erected? A. They came in about the time, about 1878, along in there, or 1879.

Q. How long did they stay there, that is the car stables? A. About eight or ten years.

Q. When did Westcott's Express stable come in there? A. I do not remember Westcott's Express stable.

Q. On the north side of 42nd Street? A. There was a small place there, Adams Express across the street.

EDWARD W. DE FORREST, called as a witness on behalf of the claimants, having been duly sworn, testified as follows:

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Direct examination by Mr. Nichols:

Q. What is your business, Mr. DeForrest? A. Secretary to the 42nd Street Property Owners & Merchants Association.

Q. Have you in that position been connected with the Legislature and other efforts to secure the removal of the spur in 42nd Street? A. I have.

Mr. Nichols: I might say that Mr. DeForrest is here under subpoena. He has conducted the campaign to have our spur taken down, and he knows so much about the conditions surrounding the Legislature and the different efforts that I think that he is the best witness we can get, and so I subpoenaed him.

2475

By the Court:

Q. What is your official connection with the Association? A. Secretary of the 42nd Street Property Owners & Merchants Association.

By Mr. Nichols:

Q. Briefly, what is that organization, is that an organization of 42nd Street property owners?

2476 Mr. LaMotte: This is absolutely irrelevant, incompetent and immaterial.

The Court: I will receive it.

Mr. LaMotte: Exception. I urge the same objection to this testimony as I did to the testimony of Mr. Schoonmaker.

The Court: Let it be understood at this time, Mr. LaMotte, that your objection to this line of testimony is sufficient to cover it all. May we have that understood?

Mr. Nichols: Certainly.

2477 Mr. LaMotte: And I may have an exception?

The Court: Yes.

A. It is a group of property owners and merchants, located and doing business, or owning property on 42nd Street and the environments thereof.

Q. What have been the activities of that association as you have conducted them with reference to the removal of the 42nd Street spur? First, beginning when? A. In 1919.

Q. When did the effort to remove the spur begin? A. To the best of my knowledge that began back in 1912.

2478 Q. In 1917 the first bill was passed? A. I believe so.

Q. In 1918 was the Lexington Avenue subway opened? A. Yes.

Q. About October of that year? A. To the best of my knowledge.

Q. His Honor has asked these questions to get a brief statement as to real estate values?

Mr. LaMotte: That calls for an opinion.

By the Court:

Q. The efforts to remove the spur began in 1912? A. Yes.

2479

Q. And the first Act was passed in 1917? A. Yes.

Q. What is the next step? A. The next Act was passed in 1919.

By Mr. Nichols:

Q. Go on. A. That Act was amended and finally passed in 1923, or 1922, was it?

Q. 1923 was the last Act? A. Yes. The growth and demand in those blocks—

Mr. LaMotte: I object to that, that is not responsive to any question.

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Q. What was done under the Legislature of 1912? A. I think that the City decided that the Act was not strong enough to proceed with condemnation proceedings.

Q. That is, it was an Act permitting the removal, with negotiations with the property owners? A. Yes.

Q. What was the effect of the opening of the Lexington Avenue subway, paralleling the Third Avenue Line, in respect to the removal of the spur? A. It was thought that the spur would not be necessary when the Lexington Avenue Line was opened.

2481

Q. Did you attend various hearings before the Board of Estimate and Apportionment and the Legislative Committee, and the Mayor and Governor and the Transit Commission with reference to the removal of the spur? A. Yes.

Q. Was there any other than unanimous action in regard to the removal, and the action on the part of the various bodies called upon to pass upon the desirability or necessity for the removal of the spur?

2482 Mr. LaMotte: The only way to prove that is the recorded determination of those bodies.

Q. I mean the ones that you attended, as far as you know was there any opposition to the removal of this spur by any one? A. Not an organization as such.

Q. Was there any opposition other than that of the railway company to the removal of the spur at any time within your knowledge of the matter?

Mr. LaMotte: Objected to as incompetent evidence.

2483 Allowed. Exception by Mr. LaMotte.

A. Opposition on the part of some individual property owners conditioned on the amount of the assessment.

Q. But not officially? A. No.

Q. I wish you would tell briefly what you know about the situation?

Mr. LaMotte: In respect to what?

The Witness: The movement was brought about not from the standpoint of increase in the value of the property but to the dangerous condition of the thoroughfare itself. The contention of

2484 our association is, and has been, that automatic values in that specific district—

Mr. LaMotte: Objected to as not responsive.

The Witness: I am trying to show that the values were not due to the removal of the spur, the increase.

Q. Let me ask you this question so that we will have it on the record without any objection: What was the condition of the vehicular traffic prior to the removal of the spur in East 42nd Street between Park and Third Avenues?

The Court: I think we have that from other witnesses.

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Mr. Nichols: Yes.

A. Very congested.

By the Court:

Q. That was due to the columns in the street, was it not? A. Yes.

By Mr. Nichols:

Q. Was the placing of the columns eight feet from the curb and the car tracks in the middle of the street a serious and peculiar congestion? A. Yes.

2486

Q. To what extent did that reduce the capacity of the street for moving vehicular traffic?

Mr. LaMotte: He is not a traffic expert.

Mr. Nichols: The Association made a very extensive study of traffic there—haven't they?

The Witness: Yes.

Q. Describe the condition of the street? A. There were numerous columns eight feet from the sidewalk in the street, supporting the elevated, and since their removal there has been nearly as much congestion, but not the dangerous conditions that existed before the pillars were there.

2487

By the Court:

Q. Any more traffic now than then? A. I do not consider that there is.

By Mr. Nichols:

Q. That is only, of course, in the last few months? A. Yes.

Q. Are you familiar with President Miller's statement published in your publication, the publication of your organization as to the increase of

2488 traffic conditions in that vicinity,—it is increasing it? A. Yes.

Q. Very much at the present time? A. Yes.

Q. There is no question about the necessity of the removal of those spurs in order to properly take care of the traffic requirements in that district? A. The removal of the columns relieved a dangerous condition that existed.

Q. What in your opinion was the effect of the opening of the Lexington Avenue subway, paralleling the Third Avenue Line in October, 1918, as to

2489 the necessity of a spur?

Mr. LaMotte: Objected to.

Objection overruled. Exception.

A. We thought that the opening of the subway lessened the demand for the use of the spur, and that automatically the opening of the Lexington Avenue entrance to the subway, the spur would voluntarily be taken down by the railroad.

Q. And the legislation at that time, you have testified, was imperfect to accomplish that result practically?

Mr. LaMotte: That calls for a law answer.

2490 A. We considered it so.

Q. You know that the Corporation Counsel admitted that the legislation even in 1919 was still defective, don't you know that, as a fact? A. He so stated.

Q. That was before the Board of Estimate and Apportionment when this question came up for determination? A. I did not hear him state it before the Board, but he stated it to me.

Q. And in his official reports? A. I believe he has.

Q. Was it the defect of the legislation rather

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than the conditions actually existing there which delayed the removal of the spur?

Mr. LaMotte: Objected to, as that is for the Court to determine from the facts.

The Court: I do not think there is any question about it, and there will be no harm done.

A. We considered that it was due to the defective legislation.

Q. Rather than to any condition there? A. Yes.

Q. So that it was delayed beyond your expectations? A. It was.

2492

Q. Otherwise it would have been taken down in 1918? A. That I do not know.

Q. Following the opening of the Lexington Avenue subway? A. I cannot answer that.

Q. The expectation was that it would be taken down following the opening of the Lexington Avenue subway? A. Yes.

Q. The discounting began at that time?

Mr. LaMotte: Expectation on the part of whom?

Q. You and those familiar and interested in the situation, such as yourself? A. I am speaking individually for myself.

2493

Q. During all those years you were actively engaged in constantly presenting this matter? A. I was actively engaged in 1910, and on.

Q. I might say that your efforts were most conspicuous and potent in connection with the whole matter? A. I have been active.

Cross examination by Mr. LaMotte:

Q. Mr. De Forrest, you are secretary of the 42nd Street Property Owners & Merchants Association? A. Yes.

2494 Q. Do you know what the area of assessment is in this case? A. I believe I do.

Q. How far south does it go? A. 34th Street.

Q. How far north? A. 50th Street.

Q. How far east? A. Second Avenue.

Q. And west? A. Fifth Avenue.

Q. What proportion of those people were members of your 42nd Street Association? A. Very small.

Q. One per cent.? A. Not knowing the number of people in that area I cannot say other than we
2495 have a membership of about two hundred, a very small proportion.

Q. You say that the moving motive of this whole procedure to remove the structure so far as your acquaintance with it is concerned and that of your 42nd Street Association was to relieve traffic conditions in 42nd Street; did you say that? A. I did.

Q. That is, the Fire Department wanted it out? A. Yes.

Q. And the Police Department? A. Yes.

Q. Is that right? A. Yes.

Q. And that was the moving motive? A. It was.

2496 *By the Court*:

Q. Is there any other elevated structure in the streets of New York City where the columns are placed just as they were in 42nd Street?

Mr. Nichols: That is the only place we know of.

Redirect examination by Mr. Nichols:

Q. The great proportion of the property owners on 42nd Street in the immediate vicinity were either members of that association or contributed to your efforts in some manner, or other, were they not? A. In that immediate vicinity.

2497

Q. You had them all, practically? A. A large percentage of them.

Q. The greater proportion of them? A. Yes.

Recross examination by Mr. LaMotte:

Q. How many did you have on 42nd Street? A. In that immediate vicinity, do you mean?

Q. Between Third Avenue and Park Avenue? A. Between Third Avenue and Park Avenue we had over sixty per cent. of the representatives of the property owners.

Q. The other forty you did not have? A. No.

2498

Redirect examination by Mr. Nichols:

Q. Who were some of the men, important men, who were members and in this vicinity? A. Important in what respect?

Q. Big property owners? A. There was the Bowery Savings Bank, and the Pershing Square Building, and Mr. Mandel, president, and the Manhattan Storage, Mr. Nichols, Vice-President, and Mr. Volk, and the Commodore Hotel, the New York Central Railroad, Seward Ehrich and the Corn Exchange Bank.

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Q. Is Mr. Knox the president of the Bowery Savings Bank? A. Yes.

HAROLD L. COE, called as a witness in behalf of the claimants, having been duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Mr. Nichols: I want to put in evidence some additional photographs of 42nd Street before and after the removal of the structure. We have not

2500 had an opportunity to put in any after the structure was removed,—if there is no objection.

Mr. LaMotte: I have no objection to your putting in the photographs of the site at the time title vested, and after the structure was removed, but I object to it as irrelevant, incompetent and immaterial, as it may only have one bearing, and that is upon the benefit, which is not material here in determining the value of the property taken in this proceeding.

Overruled. Exception.

2501 Mr. LaMotte: I take an exception, and the objections which I have heretofore stated fully on the record will apply to this line of testimony as well?

The Court: Yes.

(Photographs of conditions before removal marked Claimants' Exhibits R, R-1, R-2, R-3, R-4, R-5, R-6, R-7, R-8, R-9, R-10, R-11, R-12 and R-13.)

(Photographs of conditions after removal marked Claimants' Exhibits S, S-1, S-2, S-3, S-4, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-12, S-13, S-14, S-15 and S-16.)

2502 The Witness: The dates are on the back.

Q. You are a photographer? A. Yes, sir.

Q. You have taken the photographs now offered and received in evidence as R and S in this proceeding? A. Yes.

Q. And they represent the conditions as they existed on the date which you have endorsed on the back of the photographs? A. Yes.

ROBERT HUNTLEY, called as a witness on behalf of the claimants, having been duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. What is your name? A. Robert Huntley.

2503

Q. Your business? A. Real estate broker and appraiser.

Q. How long have you been in that business? A. Twenty-five years last past.

Q. With what office are you connected now? A. Associated with the office of Joseph P. Day, Inc., 67 Liberty Street, New York City.

Q. What is the nature of the business that Joseph P. Day is in? A. He conducts a general real estate business, auctioning of property and selling property at private sale and making a specialty of industrial plant sales and having a very large appraisal business, probably about as large as any office in the City.

2504

By the Court:

Q. How long have you been with them? A. I have been with Mr. Day for twenty-three years.

By Mr. Nichols:

Q. What is the extent of the business of Joseph P. Day with which you are connected and engaged? A. We frequently state that we sell at least fifty million dollars worth of property every year and I think that is correct, and I know that I have appraised a great many million dollars worth of property every year.

2505

Q. What are your duties in connection with that business? A. I have charge of all the appraisals —my early experience I was in charge of a private selling department and afterwards we branched out in the auction business and I attended the auction sales and I received the money and signed the contracts.

Q. Auctions of real estate? A. Yes.

2506 Q. And auctions of railway easements in the City of New York, among others? A. We offered property at auction and sold property at auction which belonged to the City of New York which was subject to easements of the subway.

Q. What method did you proceed in keeping yourself informed as to the values and course of values in order to make appraisals? A. I read the daily papers and I read the Record and Guide, which is the official real estate paper and I gathered information from buyers and sellers and from
2507 other brokers regarding transactions in the City. I gathered information about mortgages and about leases and I kept that information card indexed.

Q. Have you frequently appraised property in the general neighborhood of 42nd Street and Park Avenue? A. I have appraised a great many pieces of property there in that neighborhood.

Q. Have you listed those properties which we can hand to the stenographer to save time, and the Corporation Counsel for convenience in cross examination? A. I have at the present time only a list that is in my possession, but I shall be very glad to furnish the stenographer a list.

2508 Q. Will you read it if you have not an additional copy? A. Northeast corner of Fifth Avenue and 42nd Street—

Mr. LaMotte: Cannot you furnish a list?

Mr. Nichols: I wish to have this in the record relating to the immediate vicinity and we will have another list later.

The Witness: Southeast corner of Fifth Avenue and 43rd Street.

Q. Go on? A. Northeast corner of Fifth Avenue and 36th Street, northeast corner of Fifth Avenue and 37th Street, southeast corner of Fifth Avenue and 39th Street, southwest corner of Fifth Avenue

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and 40th Street, northwest corner of Fifth Avenue and 39th Street, Morgan east side of Madison Avenue, between 36th and 37th Streets, and the southwest corner of Madison Avenue and 38th Street, and the northeast corner of Madison Avenue and 41st Street, and northwest corner of Madison Avenue and 41st Street, northwest corner of Park Avenue and 36th Street, northeast corner of Park Avenue and 40th Street, the Murray Hill Hotel property, west side of Park Avenue, 40th to 41st Street and the Park-Lexington Avenue Building and the Grand Central Palace at Park Avenue and

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46th Street. I have appraised the property and the lease of the Biltmore Hotel and I have appraised the Gotham Hotel property at Fifth Avenue and 55th Street and appraised the leasehold interest, and I have appraised the property at 11, 13, 15, 17 and 19, 21 and 23 West 42nd Street, the value of the leasehold interest, and I have appraised the northeast corner of Sixth Avenue and 42nd Street and the value of the lessees' interest and I have appraised the value of the property at the northwest corner of Sixth Avenue and 42nd Street.

Q. Go on? A. I have appraised the value of the

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lessees' interest in the Arnold Constable store at Fifth Avenue and 40th Street, and I have appraised all the property of the New York Central Railroad on the north side of 42nd Street, that is the land running from 42nd Street up to 59th Street.

Q. Have you frequently testified as an expert in Court proceedings involving the value of real estate? A. I have in upwards of 350 cases.

Q. Sometimes for the City of New York? A. I have.

Q. Have you a list of that? A. I have. I have

2512 testified as to the value of the Knickerbocker Hotel at the corner of Broadway and 42nd Street, and the old Pabst Hotel, which is on the north side of 42nd Street, running from Broadway to Seventh Avenue and part of the property which is now the site of the Times Building, and I appraised the New York Theatre, Broadway, 44th and 45th Streets, and the Manhattan Storage Warehouse, Seventh Avenue and 52nd Street, and the Ford Building, Broadway and 54th Street, and the United States Rubber Company's building on
2513 Broadway and 58th Street and the northeast corner of Seventh Avenue and 49th Street and the York Hotel on Seventh Avenue and 36th Street, and Macy's store, Broadway and 34th Street, and the Grand Union Hotel at Park Avenue, which is at Park Avenue and 42nd Street. The Murray Hill Hotel, Park Avenue and 40th and 41st Streets, Madison Avenue southeast corner and 51st Street, and appraised all of the Van Buren estate properties comprising about 106 parcels on Fifth Avenue, 14th Street, Union Square and 13th Street, and in the matter of the acquiring of land for the
2514 operation of subways in Centre Street I testified as to the value of five parcels, and I testified as to the value of all of the land owned by the Consolidated Gas Company and its affiliated companies in the City of New York. I testified as to the value of the Equitable Building. I testified in the New Haven rate cases involving railroad easements in the immediate vicinity of 42nd Street and Park Avenue from 45th Street to 59th Street and from 59th Street to the Harlem River, and from the Harlem River to Woodlawn in the Bronx. I testified in the New York Edison Company rate cases to the value of the land owned by the New York Edison Company in the City of New York.

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Q. That is a part of the list to which you have referred? A. Yes, I could enumerate a great many more if necessary, but those are some of the important ones.

Q. Have you testified as to the value of easements? A. I have, I testified as to the value of an easement under the Stevens House, the Maier's property at the corner of Broadway and Morris Street for a subway easement, and I testified as to the value of property on the west side of William Street about 40 feet south of Beekman Street, land and building under lease, and easement for the subway was taken, and I testified as to the value of the easement for the subway under the Post Office at the City Hall, and I testified as to the value of all the easements in the New York, New Haven & Hartford rate cases which were in the immediate vicinity of 42nd Street and Park Avenue.

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Q. You have a list of the properties in respect to which you have testified to easements? A. I have.

Q. Have you appraised property subject to easements? A. I have.

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Q. Can you give us a list of them? A. I have appraised property on the west side of Centre Street, the block front from Walker to Canal Street, and the block front on the west side of Centre from Canal to Howard Street, and the southeast corner of Howard and Canal Street and the corner of Kenmore Place and Cleveland Street and the corner of the Bowery and Kenmore Place and the corner of Lenox Avenue and 143rd Street and the southwest corner and also the northwest corner, and on the east side of Broadway south of —between 103rd and 104th Streets, and I have

2518 appraised for the Rapid Transit Commission twelve parcels on Fulton Street, Flatbush Avenue and DeKalb Avenue, Brooklyn, which were subject to subway easements.

Q. You are familiar with the value of easements as determined by the course of sales to the City and otherwise? A. I am.

Q. You have testified in cases brought by the City and conducted by the City to condemn what was called Pershing Square Building and acquiring an easement for the subway, did you? A. Yes,

2519 it was a condemnation of the entire fee and leasehold interest in the property and in that case the City bought the property, the entire property, in order to acquire an easement.

Q. In order to get the easement? A. Yes.

Q. Across the street, under the Commodore Hotel, are you familiar with what the City paid for the easement there for the subway?

Mr. LaMotte: Objected to as that is a matter of cross examination. You are bringing out the consideration paid for a sale, that is for cross examination.

2520 The Court: He may answer.

Mr. LaMotte: Exception.

A. I am, and with what it cost.

Q. And in relation to what it cost as to the value of the property at that time? A. Yes.

Q. Similarly are you familiar with what was paid to such of the abutting properties as made claims for the viaduct directly across 42nd Street and Park Avenue? A. Yes.

Q. The City owned Pershing Square at that time so that it did not make any claim itself for the viaduct across 42nd Street and Park Avenue? A.

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Yes, the City owned the east side of Park Avenue from 41st to 42nd Streets.

Q. The tenant of the Belmont Hotel made a claim? A. Yes.

Q. For a lease expiring eight years, and ten months from the first—from the date of the claim? A. Yes.

Q. And you know what was paid by the Commission that passed upon the value of that easement of light, air and access at 42nd Street and Park Avenue? A. Yes.

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Q. And you know also what was paid for the easement taken by the viaduct in Park Avenue of light, air and access for the Murray Hill Hotel, as determined in that proceeding? A. Yes.

Q. As of January 1st, 1918? A. Yes.

Q. Are you familiar with what was paid for the subway easement under the Belmont Hotel for the first subway in 1902? A. Yes.

Q. And its relation to the value of the property? A. Yes.

Q. Are you familiar with the sale or attempted sale by the City of an easement, or the property subject to an easement which the City had taken in Centre Street and elsewhere? A. Yes.

2523

Q. And the values that were obtained by the City for the property after the easement had been acquired? A. Yes.

Q. And the values before and after, that is, the values before the easement was taken and the property was subject to easement? A. Yes.

Q. Were those properties placed by the City in the hands of your office for sale? A. Yes.

Q. And advertised for sale? A. Yes.

Q. Were there eighteen parcels of such property made subject to easements which the City put in

2524 your hands for auction sale? A. I think there were eighteen parcels.

Q. And after the properties had been subjected to these easements what was affected in that sale —not the values but just the actual facts? A. We were not able to sell many of the properties.

Q. To what extent, if any, does the existence of an easement appurtenant to a property, in your actual experience, confining it to property which you have sold subject to easements,—what effect does it have upon the marketability of the prop-

2525 erty? A. It has a very serious effect, lessening the marketability of the property and in cases which I have spoken of, varying anywhere from ten to fifty per cent. according to the nature of the easement.

Q. Are you familiar with what the City paid for the easement under the old Astor House in Vesey Street? A. I am.

The Court: What was the easement acquired there for?

Mr. Nichols: For the subway.

Q. And with the extent to which it affected the

2526 value of the property? A. Yes.

Q. And the extent to which it affected the value of the property both physically and as an encumbrance rendering the property less marketable? A. Yes.

Q. So that you know the physical conditions and the amount of space and the value of the actual space taken? A. I have not that, but I know generally what the space was, but I have not the exact statistics on that.

Q. But the property that the City put in that sale? A. In those cases the City furnished us with a diagram showing what property was affected by

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the easements and a short statement of just what that easement was.

Q. Mapped in a pamphlet of eight or ten pages? A. Maps which were used and published in our advertising of the sale.

Q. So that you are familiar with the extent to which the property was taken and also to the extent to which those values were affected? A. Yes.

Q. In the several cases? A. Which I have severally referred to, yes.

Q. Have you made appraisals for corporations, firms, banks and individuals? A. Yes.

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Q. Have you a list of them? A. I have. There is a list here but I have not an extra copy of it.

Q. If you will read those that are most closely related to 42nd Street and that vicinity, as well as those that may be important as affecting the entire City? A. I have made appraisals for the State of New York and for the City of New York, and for the New York and New Haven and Harlem Railroad Company, for the Erie Railroad Company, the Delaware, Lackawanna & Western Railroad Company, and the New Jersey Central Railroad Company, and the Central Railroad of New

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Jersey, and the New York Edison Company, the General Electric Company, the General Chemical Company, the Consolidated Gas Company; Ford, Bacon & Davis, Sanderson & Porter and the Guaranty Trust Company, Bankers Trust Company, National City Bank, National Park Bank, Realty Associates, Queens Borough Corporation, Dillon, Read & Company, Bronx Parkway Commission and made many more for many law firms also.

Q. Have you examined the structure of the elevated railroad in 42nd Street? A. Yes.

Q. And were you familiar with it as it existed

2530 on December 7, 1923, and for a long time prior to that time? A. Oh, I have known the structure probably since 1890—some thirty-five years.

Q. Have you been familiar with 42nd Street and the properties on both sides of it, particularly between Park and Third Avenues as they existed on the 7th of December, 1923? A. Yes.

Q. And for the period that you have mentioned preceding that time? A. Yes.

Q. Will you very briefly describe first, the structure as it existed and then as it existed during

2531 the various times?

The Court: I do not think it is necesasry to describe the elevated structure again, he says he is familiar with it and that he knows what it is.

Mr. Nichols: I want to have it appear on the record that the witness is qualified.

Q. You are familiar and acquainted with the conditions on 42nd Street and the improvements on 42nd Street as they existed, for say, the last thirty years? A. Yes.

Q. And if you were asked for the record to state the condition of 42nd Street during that period

2532 you would be prepared to do so? A. Yes.

Mr. Nichols: I presume your Honor feels that it is not necessary to ask him for the history of 42nd Street. I wish the record to start from the time Mr. Schoonmaker left off. I will try to make things as brief as possible.

The Court: Do you mean the history of the change?

Mr. Nichols: Yes.

Mr. LaMotte: I understood that this witness was called to testify as to the value of easements that this company claimed to own in 42nd Street.

Mr. Nichols: I want him to describe the buildings.

Claimants' Witness—Robert Huntley—Direct.

2533

Q. During your experience in 42nd Street, the character of the improvements there, give them to us as briefly as you can, a picture of what the conditions there are and were, from your earliest recollection until the present time.

Mr. LaMotte: I interpose an objection because that is going into the property abutting the street which I claim is not affected by this proceeding one way or the other so far as it determines the value of the company's interest in 42nd Street. It does not make any difference what the condition of the abutting property is and I object to it as irrelevant, incompetent and immaterial.

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Mr. Nichols: Let me be specific as to the importance I attach to this testimony—

The Court: I have indicated my intention to take this testimony.

Mr. LaMotte: Exception.

A. When I first remember 42nd Street the elevated structure was practically as it is today except that I think on the south side of 42nd Street at the corner of Park Avenue there was a stairway which ran down from an elevated structure to the sidewalk at 42nd Street, running towards Third Avenue and later—

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Q. What building? A. There was a hotel at the corner of Park Avenue and 42nd Street, and next to that there was some unimportant building that was apparently vacant and then there was a building which was used by one of the horse-car companies for the changing of horses and then there was a storage warehouse and then there was—that was at the corner of Lexington Avenue and then on the easterly corner of Lexington Avenue an old hotel and saloon, and then there were some unimportant one-story buildings, and then I think

2536 there was an old five-story loft and store building, and then, as I remember it, there was one or two three-story buildings, and then a two-story building on the corner of 42nd Street, and as I recollect, on the north side of 42nd Street there was the old Grand Central Station and the Depew Place was opened. Then there was an old factory and then there was a wall paper building or a factory upstairs and stores on the ground floor and next to that on the corner of Lexington Avenue was the Home for Crippled and Ruptured and on the north-
2537 east corner of Lexington Avenue there was the old Vanderbilt Hotel, I think a four-story brick structure, and next to that I think there were three five-story flats, and then there was a building that was a sort of a composite store and factory and then there were two or three, I think, three and four-story buildings that had stores in them and people lived upstairs and then there was a two-story building and back of that a factory and then on the corner of Third Avenue, as I remember it, was a two-story building that had a saloon in it and a restaurant and a basement place.

2538 Q. What year are you referring to now? A. Back around 1890, somewhere around there.

Q. Very briefly state any changes of any importance and then the situation as it existed at the time of taking title?

Mr. LaMotte: Same objection.

The Court: Let it be understood that your objection goes to this entire line of testimony.

A. I think somewhere around 1900 the Murray Hill Theatre was constructed. Along about 1905 or 1906 the Grand Central, I mean the New York Central Railroad Company collected the necessary property for the enlargement of their terminal.

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That work was in progress up to about 1912. Somewhere about 1911 or 1912 the Cooper estate leased the northeast corner of Lexington Avenue and 42nd Street, and the Long Beach Building was erected subsequently, and along about 1916 the old wall paper factory was torn down and the Home for the Ruptured and Crippled was torn down and the Commodore Hotel was erected.

Q. And then about—what year was that hotel opened? A. I think in January, 1919.

Q. And they started to get property before that? A. Yes, about 1916. They started the Hotel Commodore and they started to get some land for the New York Central about 1905, and they were making changes about the Grand Central station as it is now, they were making preparations for it and they were carrying their work on during all this period.

2540

Q. That was for the Grand Central station? A. That was for the Grand Central station. The Commodore site, that was acquired somewhere about 1910 or 1911, I forget the exact date, but about that time, but the real improvement was not done until it started, that is until 1916, that is when it started to build the Commodore.

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Q. Those are the changes? A. Later on the Pershing Square Building and the Bowery Building were erected and those were completed somewhere around 1923. I have not the exact date of their completion, but about at that time, and in the meantime, of course, you had—first, in 1904, you had the first subway opened with stations west of Park Avenue. Along about 1918 they commenced the work of erecting the viaduct in Park Avenue and along about 1919—somewhere in 1918 or 1919 you had the Lexington Avenue subway

2542 opened with stations on Lexington Avenue and on the east side of Park Avenue. All these things going along in the form of improvements in the neighborhood, but the general character of what I first started to describe was the general process of erection of new buildings.

Q. You have described the erection of new buildings? A. I have.

Q. Will you describe very briefly that viaduct to which you have referred on Park Avenue. I have a map here (indicating).

2543 The Court: I do not think it is necessary to do that.

Q. Just describe that. A. The viaduct is a roadway in the centre of Park Avenue, an arch, and it cuts Park Avenue at about 40th Street over to the top of the first story of the Grand Central station, so that teams can pass through under 41st Street and they can pass over the viaduct and continue right up on to the Grand Central property and around to the north and swing into Park Avenue.

Q. When did the City acquire the easement from
2544 the Grand Central to go around, as you have described, on the west side of the station? A. That was a process of quite a few years, I have not the exact period on which that was acquired, but it was a matter of negotiations for a considerable length of time, somewhere around 1914 or 1915, but to the exact plan and just what each would give up, I could not tell you.

Q. The negotiations embraced a new driveway around the east side on which the City is acting now? A. Yes.

Q. The acquisition by the City of the easement for that overhead street in Depew Place? A. Yes.

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Q. You are familiar with the conditions by which that easement was acquired by the City of New York, are you not? A. I am generally.

Mr. LaMotte: I reserve the right to ask the witness any question on his qualifications on my general cross examination.

Q. Are you familiar with all of the sales on the line of the spur in 42nd Street during the period to which you have referred? A. Yes.

Q. And those that have been made as well before as after the removal of the spur? A. Yes.

2546

Q. Have you made a study of the course of values in the streets in this locality which are similar in the nature of occupation and availability to the portion of East 46th Street occupied by the subway? A. I have.

Q. Have you for comparison in the course of your preparation considered the course of values unaffected by the railway use and occupation of the spur and that of property so affected upon the line of the subway? A. I have.

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Q. Have you effected a similar comparison between the course of values of property subject only to normal influences of City development in that neighborhood since the date on which the removal of the spur was discounted as a matter of real estate values? A. Yes.

Q. Have you compared that course of value in the neighborhood and streets and the locality that we have spoken of with the course of value of property along the line of the spur since that time? A. Yes.

Q. Up to the time of vesting of title? A. Yes.

Q. And since the vesting of title? A. Yes.

Q. What date did you employ in your preparation to determine the value of the easements by

2548 that comparison as that on which the discounting of the removal of the spur immediately, practically and materially affected real estate values on East 42nd Street from Park to Third?

Mr. LaMotte: Whether he has done these things in the course of his preparation is a matter of cross examination.

The Court: I think you have qualified him sufficiently, you may put your main question.

Mr. Nichols: Very good, but I will ask one more question.

2549 Q. You have tabulated all sales in this neighborhood which you deem similar to 42nd Street, wherein comparisons are referred to? A. Yes.

Q. And you have based your determination upon the sales, those sales that have been subject to verification? A. Yes.

Q. Going back how far? A. 1900.

Q. Have you also made a study, not for the purpose of determining the values of individual property, or the course of values of individual property or locality, but the comparative course of value between property on the line of the spur and off

2550 the line of the spur, of the assessed values made by the City during this period?

Mr. LaMotte: I make the same objection.

Overruled. Exception.

A. Yes.

Q. Have you utilized for the purpose of that preparation a compilation of the values assessed by the City of all land fronting on 42nd Street spur and the general vicinity?

Mr. LaMotte: Objected to as cross examination of his own witness.

Mr. Nichols: Then I will offer to place in evidence all the assessed values made by the City it-

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self for that limited purpose which I stated, to show the comparative course of values.

The Court: I will allow the question.

Mr. LaMotte: Exception.

A. Yes.

Mr. Nichols: I offer for that mode of proof these assessed values of the City made by the City.

The Court: He says he has taken them into consideration.

Mr. Nichols: I want to have it placed on the record that I have offered these in evidence. I am willing to rest upon that if they were admitted.

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Q. Mr. Huntley, you have made all the comparison which you have found available between the course of values on the spur and in the vicinity of Third Avenue and 41st and 43rd Streets, and wherever you have found comparisons available to enable you to carve out the value of these easements? A. I have.

Q. Have you appraised the value of all the properties abutting upon the spur whose easements are taken and occupied by the elevated railway prior to the vesting of title?

Mr. LaMotte: Objected to as we are not concerned with the abutting property.

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The Court: Allowed.

Mr. LaMotte: Exception.

A. I have.

Q. And each property severally? A. Yes.

Q. And in the very years back prior to the date of discounting so as to determine a staple basis of comparison? A. I have not appraised each and every parcel as of 1907, but I have looked up the units of value on which I would have made such a computation but I haven't it on each parcel, because the parcels in all cases are not the same

2554 now as they were in 1907, but I have looked up units of value of 1907, but I have not appraised these properties. I could not appraise the Bowery Bank in 1907 because it was not there.

Q. What in your opinion was the fair market value of the easements of light, air and access in and over East 42nd Street appurtenant to the properties on the line of the elevated railroad spur abutting thereon, occupied and taken by the elevated railway and its operation in front of said premises at the date of vesting title in the City on

2555 December 7, 1923?

Mr. LaMotte: The City objects to the question upon the ground that it is incompetent, immaterial and irrelevant and the question assumes that the railroad company is the owner of easements of light, air and access in 42nd Street, which formerly belonged to the abutting owners, separate, apart and in addition to its railroad; and that the City in this proceeding takes from the company, in addition to the railroad, these easements of light, air and access.

The Railroad Company does not own easements

2556 of light, air and access in 42nd Street, which formerly belonged to the abutting owners. These easements are incapable of ownership separate and apart from the abutting property. The railroad, by the erection of its structure in 42nd Street, extinguished said easements of light, air and access to the extent that the structure occupied the street and by the payment of damages to the abutting property owners in settlement of injunction suits in some cases, and by condemnation in others, and by prescription in still others, it acquired the right to maintain its structure in the street, operate it as a railroad, and to continue to extinguish

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the easements by so doing during the life of its franchise free from interference or the right of interference on the part of the abutting owners.

All that the company owns in 42nd Street, and all that is taken in this proceeding are the franchise obtained from the State and the City, the elevated structure erected in the street by the company, and the right to maintain the structure and operate it as a railroad pending the life of its franchise free from interference or the right of interference on the part of the abutting property owners. These taken together constitute a legal railroad. Without the franchise there would be no railroad. With the franchise and the structure, but without the right to maintain it in the street as against the abutting property owners there would be no railroad. All three are necessary to constitute and make a railroad. That is all that this company owns in 42nd Street, and all that is taken is a railroad. Whatever that is worth as a part of an elevated railroad system in operation either for the purpose of sale as a railroad, to lease as a railroad, or to operate, this company is entitled to be paid in this proceeding and no more.

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The City does not understand that the company is offering this testimony for the purpose of proving what damages the company would be required to pay to the abutting owners if it erected its railroad structure on the date title vested in the City, or in other words for the purpose of proving the cost of the reproduction of this railroad on the date that title vested. But if that is the purpose the City objects to the admissibility of such testimony upon the ground that the company has laid no foundation for such proof. There is no evidence in the record to show that any reasonably

2560 prudent man or company would reproduce this railroad under present conditions. On the contrary there is uncontradicted competent evidence in this case to the effect that this railroad does not pay its operating expenses and that the company is better off without it than with it.

The Court: The value to whom?

Mr. Nichols: I said their market value.

The Court: Don't you mean worth to the railroad?

Mr. Nichols: The market value.

2561 The Court: To whom?

Mr. Nichols: To the abutting property owners. These easements are now of course being acquired for the beneficial enjoyment of the abutting property owners.

Mr. LaMotte: They have a right to maintain their structure for one purpose, and that is for railroad purpose, and if that is what he means and that is what he intends to value then I object to this testimony upon the further ground that this witness is not qualified to value a right of way of a railroad when I assume that his contention was

2562 that he owned easements separate and apart from the railroad which he could handle and convey separate and apart from the railroad, but now I judge from what he says that he simply means to indicate that it is a railroad right of way through the air, and I object to this testimony upon the ground that he is not a railroad expert and he is not entitled to express an opinion.

Objection overruled. Exception.

A. $3,601,491 actual calculation, or say in round figures $3,600,000.

Mr. LaMotte: I move to strike that out on the ground that the witness is not qualified to answer.

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Denied. Exception by Mr. LaMotte.

Mr. Roberts: On behalf of the Manhattan Railway Company we would want to prove the value of these easements under the indirect method of proof, so-called, unless Mr. LaMotte will now stipulate that if we had any right whatever, had we used the indirect method, we would not lose that right by using the direct method.

Mr. LaMotte: I will not stipulate as to anything like that.

Cross examination by Mr. LaMotte:

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Q. Mr. Huntley, how long have you been in the real estate business? A. Twenty-five years last past.

Q. How long with Mr. Day? A. With Mr. Day about twenty-three years.

Q. So when you testified to conditions prevailing here in 1900 that was a time before you had entered upon the real estate field? A. Yes.

Q. Ten years before? A. About that—rather eight.

Q. What were you doing at that time? A. Working as a bookkeeper in New York City and living over on East 31st Street.

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Q. These appraisals which you have testified to that you made in this neighborhood, were those published to the world in the name of Joseph P. Day, were they not? A. Yes.

Q. And they were delivered to the party for whom the appraisal was made, in his name? A. Almost invariably but when I did work for the City I had to send the bill in my own name and once in a while I had to do that for some individual or corporation, but generally they were sent out in the name of Joseph P. Day.

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Q. What case did you ever testify in for the City? A. In the matter of the certiorari for the review of tax assessments of the Hotel Knickerbocker.

Q. That was a case where the value placed upon the property by the City was attacked by the owner? A. Yes.

Q. And you were called in that case to sustain the valuation? A. Yes.

Q. You have testified here that you have valued easements? A. Yes.

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Q. On several occasions? A. Yes.

Q. Which was the first one? A. The first one that I remember was the Stevens House.

Q. Where is that? A. Corner of Broadway and Morris Street.

Q. Was that a case where the railroad acquired the right to run its railroad over the land? A. It acquired the right to run a railroad under the strip of the land and through it.

Q. Your testimony there was as to the value of the property before the railroad went there and the value of it with the railroad there, wasn't it?

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A. Yes, the damage was so much in one case and I testified to both values and they asked me if I would state the percentage of damage to the property through the operation of the railroad.

Q. That is what you did in the case of all those railroad easements? A. Practically, yes.

Q. Did you ever give testimony to what an easement was worth in the market separate and independent of the real estate to which it is attached? A. Easement separately from the railroad?

Q. Not from the railroad, but from anything? A. From the property?

Q. Take, for instance, 42nd Street that you have

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testified to, the value of an easement of light and the easement of air and the easement of access separated and in independent ownership in the street from the abutting land? A. Most of these cases must have been of that sort.

Q. Did you or did you not? A. Yes, I testified as to the value of the easements in William Street —I mean matter of William Street, as to what was the value of that easement.

Q. You mean in the elevated railroad case? A. Subway case.

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Q. Is that the corner of Beekman Street? A. Below the corner of Beekman Street.

Q. In that case you testified that the taking of the easement by that railroad would affect the value of real estate a certain amount? A. That was the method by which I did it. I said the value of an easement was so much money.

Q. Did you ever testify to the value of a street easement over the surface of a street, the light, air, access, separate and apart from the abutting owner and in a separate and distinct ownership from the abutting owner? A. I do not remember ever testifying as to just that effect.

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Q. Of course you never did. What is it that you understand by an easement of light? A. The right to free and unobstructed reception of light.

Q. It is the free and unobstructed reception of light? A. Yes.

Q. When you speak of an easement appurtenant to abutting property on a street it means the right to have free circulation of air coming to his lot? A. If you are speaking about the easement of air, it is the free uninterrupted flow of the air.

Q. And as to the light it is the same? A. Same thing.

2572 Q. As to the easement of access—it is the right —follow me—of the owner of a lot to go from his lot over a street and return to his lot over the street unmolested? A. Without any interruption or interference.

Q. As I understand it you have assumed in getting at the value of the property that you have valued that a portion of this light and a portion of this air and a portion of this access was taken from these owners and now owned and possessed by this railroad in the street independent of the

2573 structure and the franchise, is that right? A. Yes, that easement is now vested—

Q. In other words, you have assumed that this railroad owns these three things separate and apart from its railroad? A. Absolutely.

Q. And that is real estate which you have attempted to value? A. Yes.

Q. Can you see the light up there? A. Can I see the light?

Q. Yes. A. I can see light, certainly.

Q. Can you see the light and the air and the access that the railroad took? A. Certainly.

Q. You can see that? A. Certainly you can.

2574 Q. And you have assumed that the owners owned that, or that the railroad, rather, owned that in 42nd Street? A. Yes.

Q. In the abutting property? A. Yes.

Q. And that they can sell it? A. Yes.

Q. Transfer it? A. Yes.

Q. Separate and apart from the railroad? A. Yes.

Q. And that this money which you have testified that these easements are worth separate and independent of the railroad is what the railroad could sell them for in the open market? A. Yes.

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Q. And did you assume they could be sold to anyone particularly? A. It might be sold to the abutting property owners or to the City of New York.

Q. How did you assume that the railroad could deliver them to the abutting property owners? A. By an ordinary conveyance.

Q. In other words, you have assumed that the railroad could maintain and operate this structure in that street as the law directed to do while the franchise lasts and could at the same time make a conveyance of these easements of light, air and access to the abutting owners, is that right? A. I did not say anything about the operation of the railroad.

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Q. Isn't that it, yes or no? A. No, it is not. I said they had these easements and they could sell them. They acquired them and they could sell them.

Q. I ask you how they could be delivered and you said by conveyance? A. They could deliver the conveyance.

Q. To the abutting owners? A. Yes.

Q. Assuming that the railroad was required to maintain this structure in the street and operate it as a railroad under its charter and according to the laws of the State, could the railroad then sell these easements of light, air and access to the abutting owners and deliver them by deed? A. You will have to ask a lawyer, I am not competent to answer a question of law.

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Q. I ask you what you consider, not what could be done, but I ask you this, did you consider in estimating the value of these easements that the railroad could maintain its structure in the street and operate it as a railroad, and at the same time

2578 deliver the easements to these owners, and that you said could be done by a conveyance? A. I do not think I considered that in addition, but considered that they could deliver it.

Q. Can you answer that question yes or no? A. I did answer that I did not think I considered that they could keep it and sell it at the same time.

Q. Then— A. I think that is so on its face that is a practical impossibility, and I will say that it cannot be done.

Q. When you said that the easements could be
2579 delivered by conveyance to the abutting owners, you meant when the structure was down, is that right? A. They could be delivered to the abutting owners and the structure could remain there and the property owners could take it down if they wanted it.

Q. Is it your understanding that the railroad or somebody would have to remove the structure before the easements were conveyed to the abutting owners? A. I do not think so, that they would have to be removed. They could give those people back the easements and then they could take it or
2580 leave it as they wanted to.

Q. Let us assume that the railroad then keeps its structure in the street, how can these easements be delivered to the abutting owners. Can they be delivered, and if so, how? A. Now, you see that is too deep a question for me, at the moment I could not answer it right off.

Q. See if you cannot answer that. I will have it repeated. (Question repeated as follows:) Let us assume that the railroad then keeps its structure in the street, how can these easements be delivered to the abutting owners. Can they be delivered, and if so, how? A. I do not know.

Q. You do not know? A. No.

Q. You know enough, don't you, Mr. Huntley, to know that if that structure remains in the street these abutting owners cannot get the light, air and access? A. While the structure remains in the street the light, air and access will be obstructed.

Q. Did you assume that it had any other purchaser beside the abutting owner? A. Yes, sir.

Q. Who? A. The City of New York—general public as represented by the City Government.

Q. Did you assume that the railroad could convey to the City of New York the easement of light, 2582
air and access by deed? A. Surely.

Q. By deed? A. Some sort of a conveyance that would give —I suppose you would call it a bargain sale deed which conveys whatever they have.

Q. What would become of the railroad? A. The City could keep it there if it wanted to or tear it down.

Q. In order to deliver this easement to the City you would have to destroy your railroad, wouldn't you? A. In order that the City might enjoy the full possession of it, the railroad, the City would have to destroy the railroad. 2583

Q. But in order to deliver, as you call it or term it, this easement to the City, the railroad would have to be destroyed, isn't that correct? A. Oh, no.

Q. The structure? A. No, the railroad company could turn it over to the City and the City could do what it wanted to with it. If they wanted to get the full enjoyment out of it they would tear it down the same as anybody else.

Q. Assume that an abutting owner would decline to pay the railroad any money upon the condition that the railroad would remove the struc-

2584 ture and assume that the Legislature gave the company the right to cease operation and remove the structure, could the railroad keep those easements of light, air and access from going back to that abutting owner? A. That is a legal question and I cannot answer it.

Q. What did you assume with respect to that? A. I assumed that in this case there was an order of the Court that this structure should be taken down and removed and the City of New York should recover all the rights that the railroad com-
2585 pany had in 42nd Street including the easements of light, air and access.

Q. And you have testified to the sum of $3,600,000 as the value of these things, and you realize, don't you, that you should know something about these easements before you can place that sum upon it? A. Yes, sir, and I did.

Q. Assume that the railroad obtained from the Legislature and that the Legislature had the power to give it, this right to cease operation, and assume that it had the right to tear down this structure when it pleased, and assume that an abutting
2586 owner when the railroad came to it to demand money upon condition that it would remove the structure and that the owner refused to pay him, could the railroad prevent those easements from going back to that owner in case it tore down the structure? A. I cannot concede that any sensible railroad management would ever get itself in any such position. I cannot see—it is like asking a man to throw a dollar away down a sewer. And it is one of those unthinkable situations.

Q. Suppose the railroad obtained from the Legislature the right to cease operation and remove this structure and was given the right, if the State

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had the power to give it and dickered with these owners as to the removal of this structure and to not remove it until such time as they come to an agreement, suppose fifty per cent. of them agreed and fifty per cent. declined to agree, could the railroad keep those easements from the fifty per cent. that declined to agree after they tore it down? A. What?

Q. Could they keep the easements from going back? A. I cannot conceive that they would ever sell it until they got the one hundred per cent.

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Q. Is your testimony as to the value of these easements based upon the proposition that the railroad could obtain from the State the right to cease operation, to dicker with these owners as to the tearing down of the structure and to permit the structure to remain there until they got one hundred per cent. consent, and the amount of money that they wanted from those owners, is that the basis of your testimony? A. No.

Q. Have you divided your $3,600,000 along the line of the street—have you separated it or have you given it in one lump sum? A. I have given it here in one lump sum.

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Q. And in getting at that amount did you use a method of adding up certain sums? A. Yes, for the purpose of getting at that sum I have made certain calculations.

Q. And those calculations were divided just in accordance with the ownerships of the different properties, weren't they? A. Yes.

Q. And the amount which you have testified as the value of these easements, the total amount is what you consider to be the aggregate amount of benefit that would result to these abutting property owners by the removal of the structure, isn't

2590 that so? A. No, it is the aggregate amount of benefit which would result to these people by the recovery by them of something which they had lost.

Q. By the tearing down of this structure and the flowing back to these owners of the money that you claim that they had lost? A. Easements of light, air and access which had been held by the railroad company.

Q. And you have measured that by the increase in the value of the property with the structure in
2591 the street and with the structure out of the street when by the act of God this light and air goes back to the abutting owner? A. I have measured the difference as to what that property would be worth if they had the easements as it is now—and they have not that easement—appurtenant to that property, and what that property would be worth when they received back the full enjoyment of the easement which would be appurtenant to the property, that is the manner of that easement.

Q. That is the increase that the abutting owner gets, not by reason of this proceeding, if you want
2592 to call it, but by reason of the acquisition of the structure and its destruction by the City? A. I will state it—

Q. Is that correct? A. No, I will state what I did. My opinion is something else.

Q. You have in assuming these sums which you have added together, valued this property with the structure there, didn't you? A. No, I did not, not certainly with the structure there, but I have valued this property with and without the easements. Of course the structure was the certain thing which indicated the easements that were taken.

Q. In estimating these values before or these sums which you have measured the easements by, say, for instance, the Pershing Square Building, as of what date did you estimate as to the value of that property in the first instance? A. December 7, 1923.

Q. And you gave how much for it then? A. $4,028,696.

Q. What was the date of your second valuation? A. Second value was the same date but with a situation that they had recovered the easement.

Q. That is, that the City had taken the property 2594
away? A. Yes.

Q. That is, that title vested in the City? A. No, I do not know who the title vested in, but it gives the City the right to acquire—I judge that it comes from the City, yes.

Q. Let us get that right. This second valuation is after the City owns the railroad and this additional property the easements of light, air and access? A. Yes.

Q. That is on the same date merely after title vested? A. What?

Q. I say, that is on the same date and immediately after title vested? A. We have to assume 2595
that it is the same date.

Q. How much did you give? A. $4,318,370.

Q. And the increase that took place by the vesting of title in the City to this property was how much in that case? A. $289,674, say $290,000.

Q. Is that for the land and the building, or one or both? A. For everything, the entire property.

Q. How much is that for the land and how much of that for the building? A. Not separated in my opinion.

2596 *Claimants' Witness—Robert Huntley—Cross.*

Q. You cannot separate it? A. I did not attempt to, that is the value of the whole property.

Q. Can you separate it? A. No, I would not attempt to.

Q. Can you do it? A. The whole property is there, I do not think I can.

(Recess until 2 o'clock P. M.)

AFTERNOON SESSION.

ROBERT HUNTLEY, resumes the stand on behalf of claimants, testified as follows:

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Cross examination (continuing) by Mr. LaMotte:

Q. I understood you to say that this three million and odd thousand dollars represented what in your opinion, as a real estate expert or a witness, was a fair market value of these easements on 42nd Street that you say are in the possession of the railroad or was on December 7, 1923, just before title vested in the City? A. Yes.

Q. So that your valuation for this property is before the City took title, before the City took title and just before? A. Yes.

2598 Q. I understood you to testify that you assumed that it could be sold in the market, that these easements could be sold in the market as a separate piece of property from the railroad? A. Yes.

Q. And that these easements could be delivered? A. I am assuming that they could be. I understand that the City has had legislation about it.

Q. You assume that there are only two purchasers, the abutting owner or the City? A. Those would seem to be the logical owners. I have not gone beyond that.

Q. Do you assume that there were any other prospective purchasers? A. I have oftentimes

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been surprised at purchasers who come in, which I never suspected.

Q. Have you any easement of light, air and access in a public street separate and apart from the abutting owners for sale in your office? A. I do not recall one at the moment.

Q. If I came to your office and said, "Mr. Huntley, I want to buy on Third Avenue from the elevated railroad an easement of light, air and access in 3rd Avenue which they claim to own," what would you do with me? A. I would go out and see if the Third Avenue Railroad had any light, air or access which they could sell to you, and if they would I would start negotiations as a broker, start negotiations right away.

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Q. Your idea that that could be done, that is the theory upon which you fix this value? A. I can conceive that it would be possible, yes.

Q. Suppose the railroad agreed to give a deed for this easement to the abutting owner and the abutting owner agreed to take it and the deed had passed, how could the easement be delivered? A. That is a question for some legal man to answer.

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Q. What method did you assume would be gone through with—I am talking about before the City took title—that is your valuation—the process would have to be gone through with on the part of the railroad to deliver over to these abutting owners these easements? A. I would have to refer the question to counsel because I do not know.

Q. Did you assume they could be delivered without tearing down the railroad? A. I did not assume that they were even in the market before this act took place and because I assumed that

2602 the elevated railroad had it, and I did not assume anything further.

Q. Did you assume that the railroad could deliver these easements without destroying the structure, yes or no? A. I did not assume anything.

Q. Did you assume that they could be delivered and yet the railroad exist in the street? A. I did not assume anything.

Q. You have placed a value of $3,600,000 on this property which the railroad claims. You must have assumed something with respect to how this
2603 property could be delivered when sold, didn't you? A. I assumed if it could be sold there would be a purchaser for it and that was its fair value.

Q. Who would purchase it? A. The City of New York had already agreed to purchase it.

Q. Who else would purchase it? A. The property owners as a party.

Q. Assuming they did purchase it how was it to be delivered? A. According to the provisions of the Act under which this property was condemned.

Q. That is tearing down the structure? A. It was to be delivered through the conveyances to
2604 the City of New York as applicant to the Legislature and to obtain and extinguish all the rights that the railroad company had and to extinguish them they would have to take down the structure.

Q. And the owners would get back the easements? A. Yes.

Q. Where does the owner come into the contract? A. They formed an association and went up and applied to the City of New York to step in and do this work for them and agreed that they would be ready to pay the assessment.

Q. You are going to charge the owner for that without even giving him the opportunity to con-

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tract or bargain? A. That is getting beyond me. If I owned it—

Q. What you think it is worth is the increase between the value of the property with the structure there and what it is worth with it down, isn't it? A. I figured it out in one or two other ways, and I figured it out in another way and obtained a higher value and my counsel advised me that that is the proper measure that I have here.

Q. What you have testified to here is really the difference in value between the property with the structure there and the property taken down? A. Not quite that, but might be one way to state it, but I would state it in this way: That it is the value of that property with the easements now vested in the elevated railroad in perpetuity, and the value of that property when that easement of light, air and access has been recovered fully from the elevated railroad.

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By the Court:

Q. Restored? A. Yes.

By Mr. LaMotte:

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Q. That measure of the valuing of this property first given by you would value—the difference between the value when? A. It is the value of the property without the easement and after it the value of the easement restored.

Q. That value is fixed independently of any bargaining on the part of the abutting owners? A. Of course an appraiser only expresses an opinion as to what it would be if such a thing was there.

Q. That does not take into consideration the purchase on the part of the owner at all, does it, just this process of condemnation? A. It takes

2608 into consideration the fact that if a buyer was willing to buy, and a purchaser was willing to sell, that their minds ought readily to agree upon that point.

Q. And that is true whether it could be delivered or not? A. The fact of arriving at a fair value—I might say that in order to enjoy the full value of what you purchase the railroad structure would have to be taken down.

Q. If it was not done they could not deliver the easement, and if you keep your railroad there you
2609 cannot deliver the easement, and if you tear it down you have no railroad, and then you deliver the easement? A. I have eliminated the destruction of the railroad structure from my mind. I can tell you that in my opinion it would have to be delivered in order that they might enjoy what they bought to the fullest extent, and then that railroad structure would come down. That I can conceive.

Q. They cannot enjoy the easement without the destruction of the railroad, the company cannot maintain its railroad without preventing the abutting owners from enjoying their easement? A.
2610 That, I should say, was sort of axiomatic.

Q. Going back to the Pershing Square Building, I understood you to value it just immediately before title vested at how much? A. I think I valued the Bowery Bank Building—

Q. I mean the Pershing Square. Let us take the corner there? A. Pershing Square Building, the value before, $5,466,000.

Q. How much of that is for the buildings? A. $3,500,000.

Q. And for the land? A. $1,966,000.

Q. Immediately after the vesting of title by this proceeding how much is it? A. Total value, $5,946,360.

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Q. How much for the land? A. Land, $2,443,350.

Q. And the building? A. $3,500,000.

Q. How much of an increase? A. $477,360.

Q. How much of that did you apportion to the building, and how much to the land? A. That is apportioned over the entire property.

Q. But you gave a value for the buildings before and after? A. Yes.

Q. What is the difference in those two figures? A. Just the same.

Q. You value the building the same? A. Yes.

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Q. Then this increase should be attributed to the land? A. That is the way my figures are, yes.

Q. That amount of money you have given as the increase in the value of this property due to the City taking this railroad, that is one item which goes to make up this $3,600,000 which you have testified was the value of this property that the railroad claims to own in the city? A. Yes.

Q. I now ask you the same particular question as to each piece of property upon which you place a valuation before and the valuation after the city took title which go to make up this total sum of $3,600,000? A. Grand Central Station, value with

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elevated, $3,793,000; value without elevated, $4,413,000; easement value, $620,000. Commodore Hotel, value with elevated, $13,139,000; value without easement, $13,924,000; easement value, $785,000. Pershing Square Building, value with elevated, $5,466,000; value without elevated, $5,943,360; easement value, $477,360. Bowery Bank Building, value with elevated, $4,028,696; value without elevated, $4,318,370; easement value, $289,674. Nos. 118-120 East 42nd Street, value with elevated, $377,000; value without elevated, $498,000; easement value, $121,000. Manhattan Storage,

2614 value with elevated, $2,345,843; value without elevated, $2,874,500; easement value, $528,657. Goelet Property, $1,122,400; value without elevated $1,340,200; easement value $217,800. Nos. 148-150 East 42nd Street, value with elevated, $162,000; value without elevated, $190,000; easement value, $28,000. Nos. 152-154 East 42nd Street, value with elevated, $217,000; value without elevated, $245,000; easement value $28,000. Nos. 156-158 East 42nd Street, value with elevated, $112,000; value without elevated, $129,000; easement value, $17,000.

2615 S. E. cor. 42nd Street and Third Avenue, value with elevated, $533,000; value without elevated, $615,000; easement value $82,000. N. W. corner 42nd Street and Third Avenue, value with elevated, $418,000; value without elevated, $487,000; easement value, $69,000. Nos. 155-157 East 42nd Street, value with elevated, $226,000; value without elevated, $261,000; easement value, $35,000. No. 153 East 42nd Street, value with elevated, $87,000; value without elevated $100,000; easement value, $13,000. Nos. 149-151 East 42nd Street, value with elevated $93,000; value without elevated, $105,000;

2616 easement value, $12,000. Nos. 145-147 East 42nd Street, value with elevated, $177,000; value without elevated, $204,000; easement value, $27,000. N. E. corner Lexington Avenue and 42nd Street, value with elevated, $1,813,000; value without elevated, $2,064,000; easement value, $251,000. Total value with elevated, $34,109,939; total value without elevated, $37,711,430; easement total value, $3,601,491.

By the Court:

Q. Does this include all property in the block on both sides within the condemnation area? A. Yes.

Q. There were twenty parcels, and I suppose some are now in joint ownership?

Mr. Nichols: Some have been combined, yes.

By Mr. LaMotte:

Q. Suppose one of these abutting owners were in several ownerships, tenants were in there and some would agree to buy and the others would not, then you would attempt to deliver the easement? A. It would not affect my opinion of the value, but it might affect the ease with which the negotiations would be carried through, but it would not 2618
affect my opinion of the value. I have assumed that the railroad company and the abutting property owners could agree upon these figures as a fair basis for their negotiations.

Q. So that you took more into consideration than the mere fact of the city taking it and delivering it over and the owners going through this process, or the railroad going through this process, and then this amount of money? A. What I figured here was, here is a piece of property that you have been asking a value on, and I figure that if a buyer appears in the market, whether it 2619
is a City or abutting property owner, that the fair value of that property is so much.

Q. In other words, that the owners, after negotiations with the railroad would take down the structure after permission being given to it upon the payment of money to the abutting owners that they could come to that agreement to cover this amount? A. I have simply figured that was the value, the fair value of that portion of the railroad company's property which is described as light, air and access.

Q. In other words, you figure that that is what

2620 the owners ought to give up to the railroad to have it removed? A. I have figured that that is what might be fair for the railroad company and the property owners to agree upon.

Q. You have not in this tabulation separated the value of the buildings from the land? A. No, I have not.

Q. Have you a tabulation with it separated? A. I made a sheet for the calculation in each case of my method of arriving at all the values.

Q. You will have to give them to me, I guess? A.
2621 If you will give me time tomorrow I will promise to get up a full set.

Q. Divided up? A. Worked out and give you my entire calculation, and also the value of the land and the building, and the other value, with the property.

Q. All right. Take the property with the elevated up there just before, and then take the value just afterwards, the less value you placed on the property just before, and the greater value you placed just afterwards, increases the difference, does it not? A. Oh, yes.

2622 Q. In other words, if you took the Bowery Savings Bank, which you value at $4,028,696, and put $3,000,000 on it before, and then put the figure which you have afterwards, that would increase the difference? A. Oh, yes, indeed.

Q. So that the more you depress values with the structure there, and the more optimistic you are with the structure down, the larger is this difference? A. Yes; that is a straight mathematical proposition.

Q. Take the Pershing Square Building, that has a railroad easement running under it, hasn't it? A. Yes.

2623

Q. What is that easement? A. Easement for the subway.

Q. Did you in estimating the value of the land take that into consideration? A. Yes.

Q. What was the area of the easement in that territory? A. I do not know.

Q. Do you know how much of a lot which you have valued was covered by that easement? A. I know that there was quite a number of square feet, but I did not work it out in that way.

Q. Did you first determine what that property would be worth if there were no easement? A. I did.

2624

Q. And then you deducted what you considered the depreciation was by reason of the easement? A. Yes; expressed in terms of per cent.

Q. And what was your total before? A. Assuming that there was no easement?

Q. Yes? A. $2,622,000.

Q. That is for the land? A. The land; and the building remains the same.

Q. And with the easement there how much? A. With the easement there, $1,966,500.

Q. And that would be how much—how much did you value or estimate the easement depreciated? A. Twenty-five per cent.; that is twenty-five per cent.

2625

Q. That is, that it depreciated the land 25%? A. Yes.

Q. Where did you estimate that easement to be, how far below the surface? A. It varies at different points.

Q. Do you know how much it is below? A. I have not an exact engineering point.

Q. Do you know how wide a strip that easement covers? A. No, I do not; not the exact fig-

2626 ures I do not know. I have seen a figure, but I do not happen to have it here, I mean.

Q. What did you consider in fixing this figure? A. That it took out a very substantial portion of the area underneath the surface.

Q. If the area of the land burdened with these easements was 25 feet in width, the depreciation in the whole would be different from what it would be if the area was one hundred feet; isn't that so? A. That would depend upon what I happened to see about it.

2627 Q. I ask you then if the easement—the area was 25 foot in width and then there would be a depreciation of a certain amount? A. I do not figure by the land area. My figures are not based on the question of the exact area, or the proportion.

Q. What? A. My figures are based upon the proportion of the area of the easement to the area of the plot.

Q. You have given 25% depreciation by reason of the existence of the easement, and what would be the value of the lot if there were no easement, you have testified to that also? A. Yes.

2628 Q. Then this 25%, that is 25% of the whole land value? A. Yes; 25% of the entire land value.

Q. I ask you this: would there be any difference in that percentage if that easement area was 25 foot in width, than there would be there if it were 100 feet in width? A. I do not know.

Q. You do not know whether you would give any different depreciation in the value of the property if the easement were over a strip one hundred feet than if it were twenty-five? A. I could not tell you until I saw the strip.

Q. Yet without that knowledge you have come to an opinion that this easement depreciated the

2629

value of the entire tract 25%? A. Absolutely, yes, sir.

Q. Supposing the easement covered the entire lot? A. It could not damage it more than 25%.

Q. Do you know what would be the damage if it covered the entire lot? A. No, it does not.

Q. How much does it cover? A. It covers a portion of it.

Q. How much? Fifty per cent.? A. I could not tell.

Q. Fifty per cent.? A. No, it does not.

Q. Ten per cent.? A. I should say more than that.

2630

Q. Does it cover fifteen? A. I could not tell you. If it becomes necessary I can look it up.

Q. Where is this easement in the basement, or down below the basement? A. Part of that basement, and it is down below.

Q. Part is the basement. Where is it? A. The elevated railroad runs through there in the tube, and then there are stairways leading out to Park Avenue, and there is a stairway leading out to 42nd Street, and I have never yet seen the exact diagram of that property and cannot tell, but I know that the easement is there.

2631

Q. And without knowing to what extent that easement covers this lot, you have formed a judgment that it is worth 25% less than it would be if no easement were there? A. After seeing the easement as it existed in the building on the other side, that it was worth 25%.

Q. If you had only determined, or if you did determine when you found out the exact fact about that easement, that the depreciation when covered over the entire lot was not over 5%, then your valuation immediately before the vesting of title

2632 would be greater than the sum that you have given? A. I do not think so.

Q. If you depreciate the value of a whole without the easement only 5% instead of 25%, the amount that you arrive at would be more than what you testified to, wouldn't it? A. Not necessarily; I do not think that it would at all.

The Court: What difference does it make so long as he allows the same rate of depreciation before and after?

Mr. LaMotte: Suppose that easement only
2633 covers such an area in that property as to depreciate it only 4%, then the value before would be a certain amount greater than it is now, and the damage which is testified to would be less. That is what I am driving at.

The Court: I think the easement would be worth the same before and after.

Mr. LaMotte: He has testified to the value of a piece of property burdened with an easement and he does not know the area of that easement.

The Court: Take the Pershing Square Hotel.

Mr. LaMotte: He has given there $5,466,000, the
2634 value of the whole before, and that includes the building, and the whole is what?

The Witness: $1,966,500 is the value of the land, subject to easement, and the subway easement underneath this, I value it at $655,500.

Q. On a 25% basis? A. On a 25% basis of the entire value of the plot.

Q. The land? A. Of the plot, I said. That is land, surely.

The Court: Suppose he allowed a fifty per cent. depreciation, and allowed it before and after, would not the result be the same?

Mr. LaMotte: I do not think so.

2635

By the Court:

Q. Is Mr. LaMotte right on that? A. He does not know anything about what I am talking about, and I have tried to tell the Court myself that the exact amount of the area covered by that easement is not the governing factor in my mind as to the value of that easement as against the value of the plot without the easement.

By Mr. LaMotte:

Q. What did you value the land afterward? A. $3,257,813 as if without any subway easement, and then I depreciated that 25% because of the subway easement and that depreciation amounts to $814,453.

2636

By the Court:

Q. You allowed the same rate of depreciation before and after? A. Absolutely.

By Mr. LaMotte:

Q. You allowed the same percentage but you get different sums? A. Of course, a percentage of a higher sum would be greater than a percentage, the same percentage, of a lower sum. A percentage at a higher sum must necessarily show a greater depreciation in amount than the same rate of percentage of a lower price.

2637

Q. Do you know what that property sold for? A. The entire property, this property was not sold separately, but that property in connection with another piece was sold for $2,900,000; that is the stated consideration.

Q. You did not value the entire property back to 41st Street? A. In this case certainly I did, that easement is spread over the entire property.

2638 Q. What are the other parts that you refer to, where the bank building is? A. Yes.

Q. What did the entire thing sell for? A. $2,900,000, and that was a plot 196 feet 7 inches on Park Avenue, and 230 feet on 42nd Street, and 230 feet on 41st Street, subject to easements of the subway.

Q. The Bowery Bank bought one-third of it? A. They bought 104 feet 6 inches by 197 feet 6 inches, but I have not calculated the percentage.

Q. If you deducted from the sale price the value
2639 of what the Bowery Bank paid, figured at the average value of the whole, what would that give you for that property? A. I have not figured it. It does not interest me at all.

Q. What did the Bowery Bank pay for the property? A. $1,400,000, for what they bought, a plot 104 feet 6 inches wide, by 197 feet 6 inches deep.

Q. And that leaves the land with a value of how much? A. The matter of subtraction, you mean?

Q. Yes. A. $1,500,000.

Q. You valued it at how much? A. I figured it at $2,330,660.

2640 Q. And after? A. $3,257,813. That is before there was any easement. I presume I should correct those figures because in both instances I am valuing—they were all subject to easements, and may I substitute figures there, please?

Q. Yes? A. I am valuing this Pershing Square parcel at $1,966,500 before the recovering of the elevated railroad's easement of light, air and access. After, I valued that same property at $2,443,360.

Q. That is more than double? A. Oh, no; twice fifteen would be thirty, and I have it only twenty-four.

2641

Q. I am talking about the land? A. So I am. You asked me if I subtracted the purchase price which the Bowery Savings Bank had from the purchase price which Mandel paid, and the mathematical result is $1,500,000.

Q. You valued that immediately after title vested in the structure at how much? A. I valued it immediately after the recovery of the light, air and access through this proceeding at $2,443,360.

Q. That is more than double? A. No, it is not. That is 60% greater.

2642

Q. Then you don't mean that is the value immediately after title vested? A. I am bound here to take the situation that that is the value immediately after this proceeding. We always do that in condemnation proceedings.

Q. Then it was before even the easements went back to the abutting owners? A. It is when the easement goes back to the abutting owner—when the Courts decide that the title has vested in the City of New York, of course all the things happen—in other words, they may not happen, but in condemnation proceedings we say that it happened instantly.

2643

Q. When was the structure torn down? A. Some time this year, about April or May.

Q. So that these figures that you have given as of December 7, 1923, which was immediately after the vesting of the title, about six months before the structure was down, you mean what you think they were worth after the structure was down? A. When they are recovered or restored to the property, these easements.

Q. When did you assume that they were restored? A. Immediately.

Q. Before the structure was down? A. They

were vested in them. I do not mean to be technical and say that they were down, but we have always assumed in every case that the change happens instantly, at that moment.

Q. What percentage of increase have you given? A. I have not talked about percentage. We made a straight calculation, and it is pretty nearly nine per cent. over the whole property.

Q. Nine per cent.? A. Yes.

Q. From $1,500,000— A. I said over the whole property; that is the land and the buildings.

2645 Q. Mr. Huntley, this represents, as I understand it, the value of the property after these easements go back to it? A. Yes, sir.

Q. And represents what in your opinion is the full value of the property? A. Represents the full value of December 7, 1923.

Q. In determining that difference how much did you allot to the easement of air, and how much to the easement of light and how much to the easement of access? A. I did not attempt to separate them. They are all tied together.

Q. What? A. I did not attempt to separate

2646 them.

Q. You must have had some method of determining that increase in dollars and cents. Didn't you take into consideration the effect of each separately? A. Oh, my, no; they all came back at once.

Q. How much did you allow for the question of noise? A. Not a thing.

Q. You admit, don't you, that having a lot of noise in the street is a detriment to the value of property? A. I find that some busy streets, where the highest values are, have the greatest amount of noise from traffic in the street.

2647

Q. Can you separate this and tell us how much of this is for noise as distinguished from access and light and air? A. It did not include noise.

Q. Can you or can you not? A. No.

Q. Can you tell us how much of it is for privacy that went back to these owners? A. No; I appraised only light and air and access.

Q. Take the Commodore Hotel. That is right opposite this, isn't it? A. Yes.

Q. What did you value that in December, 1923, December 7, just before vesting of title? A. $13,139,000.

2648

Q. How much of that is for land and how much for building? A. Land, $3,139,100, and building $10,000,000.

Q. What did you value the same thing afterwards? A. Total value, $13,924,000; the value of the land $3,924,000, and the value of the building $10,000,000.

Q. How much increase? A. An increase of $785,000.

Q. Of course you got at that in the same way as you did in the case of the Pershing Square? A. Yes.

2649

Q. And the value which you have given with the structure down or assume that it ought to be taken down, was its full value? A. I gave it the value with the recovery of what it had lost, whatever easement of light, air and access was restored to it, and the value before and after.

Q. The figure which you have given, as I understand it, represents in your opinion the full value of the property: does it or doesn't it? A. Surely.

Q. If there is any benefit that went to that property, other reasons than of going back to it, of the three easements of light, air and access, that fig-

2650 ure which you have given represents or includes that benefit? A. I did not consider that at all. I simply considered the easement of light, air and access going back to the property.

Q. But you have testified under oath that this figure which you have given represents what, in your opinion was the full value of that property with the structure out of the street at that time? A. I have not stated that. I stated that the value of his property was the value that came back to it after the restoration of light, air and access.

2651 Q. You made that statement, as I understand it, and you still say that you did not even consider the benefit that flowed to it by the privacy and by the lack of noise? A. That is right. I did not consider it.

Q. You did not consider it, and you also testified that the figure you gave represented its full value, the value of the property with the structure down? A. I did not consider it. I said that was the full value of the property after the restoration to it of its easement of light, air and access.

Q. You appraised that hotel at one time, didn't

2652 you? A. Yes.

Q. For a bond issue? A. I do not think so.

Q. When was the appraisal made? A. I made the appraisal some time last year, and I made the appraisal this year, and I think about—either December of last year or January of this year.

Q. That was for this proceeding? A. No; that was to get—

Q. Never mind. What value did you place on it the first time? A. I think about the same.

Q. What did you place upon it? A. I haven't got it here.

2653

Q. I want it at the next meeting? A. I will be glad to give it to you.

Q. Who did you appraise that for? A. Joseph P. Day, to be handed over to Stanchfield & Levy.

Q. Do you know in whose possession that appraisal is today? A. I do not. Probably I have a copy.

Q. Was it handed over to Stanchfield & Levy? A. I suppose it was. I probably have a copy of it. I do not generally hand those things out without making copies and having them in my possession somewhere.

2654

Q. But you do not know what it was? A. I do not know.

Q. Didn't you appraise the leasehold of that property? A. Yes.

Q. When was that appraised? A. About the same time.

Q. What did you give for that? A. I could not tell you that here.

Q. Why is it that you come up here to testify in this proceeding, and yet you cannot testify to the very things that you have done with respect to the particular piece of property? A. I do not know.

2655

I did not carry around all the information. I could not move my cases up here to answer all these questions. If there is anything that you want me to answer, I will be frank and give it to you.

Q. You will? A. Pick them out and we will have them for you.

Q. There is an easement under the Commodore? A. There certainly is.

Q. And what is the size of the lot that you valued? A. I valued a lot 208 feet on Lexington Avenue and 208 feet on the westerly line, and 275 feet on 42nd Street and 275 feet on the rear line.

2656 Q. How much of that space does that easement cover? A. Quite a considerable space.

Q. How much? A. I have not it in exact square feet.

Q. How much depreciation did you allow by reason of that? A. 25%.

Q. Is the easement any different in area from the one in Pershing Square? A. I think it is a little larger.

Q. But yet you gave the same per cent.? A. Yes.

2657 Q. If the easement had covered the entire lot, your valuation of that property would have been different, wouldn't it? A. I would not say that it could not have been any different.

Q. If there was not any easement at all, it would have been 25% more? A. If there was no more it would not be 25% more.

Q. I say, if the easement only covered five feet across the corner, would that give 25% depreciation of the entire value? A. It is quite conceivable it would not.

Q. The extent of that depreciation depends upon
2658 the area and location of the easement? A. No, sir, not altogether.

Q. If the easement were in the basement, the depreciation would still be different than if it were 50% or 60% below the basement? A. It could not be. I have given the highest rate when—

Q. I am talking about this particular piece of property? A. It probably would not be any different whether it was ten or twenty-five feet.

Q. Do you know where the easement was? A. It is somewhat diagonally across the property from about the north line to a point perhaps half-way

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or two-thirds between Lexington Avenue and the Grand Central Station.

Q. How far down below the surface of 42nd Street? A. Quite a little distance, I could not tell you exactly.

Q. Take a line beyond which this easement does not run. Why have you depreciated that? A. Because here is a plot all in one ownership, and you could not sell that, and you could not borrow money on that plot, because it is in one ownership, and its greatest value is in one ownership, and then the value spreads over the entire holding, and its 2660
effect on market value is such that you cannot—that it depreciates it in my opinion 25%, the depreciation is over the whole thing.

Q. In other words, if an owner had eight lots between 42nd street and 41st Street, four on one street and four on the other, running through, and this easement went across only two of the lots on 42nd Street, would you consider the other six lots of less value than if the easement did not go across the two? A. I should say, yes, the whole thing.

Q. So that if a man owned the entire block, and 2661
the easement went across two of his lots, in a part of that block, you would depreciate the whole block? A. Yes.

Q. Yet if the man sold the two lots over which the easements were and kept the balance, you would confine your depreciation to those two lots afterwards? A. I surely would.

Q. So that by reason of the man's large ownership he has got to suffer, in your judgment, this depreciation over his entire property? A. Yes, if he undertook to sell the whole plot, he would find himself up against the easement.

2662 What is your unit of value for a lot on the south side of 42nd Street, inside lot, where the Pershing Square Building is? A. Before?

Q. Before. A. $200,000.

Q. That is what you think an individual lot is worth? A. Yes, without any easement.

Q. What did you give for the corner lot? A. For the corner lot I gave in 42nd Street $500,000.

Q. And that is what you think that it is worth without the easement? A. Surely.

Q. Is that correct? A. Yes.

2663 Q. And that is what it is worth as an individual lot? A. Yes.

Q. Separate from all others? A. Yes.

Q. How many lots does that easement in the Pershing Square tract affect? A. The entire plot.

Q. No, no, how many lots if it were divided up? What frontage would you have on 42nd Street? A. 126 feet 6 inches.

Q. And how much on 41st Street? A. 125 feet 6 inches.

Q. Consider that property in separate lots, how many lots in that tract does that easement cover?

2664 A. I do not know; I have not plotted it. I have not been shown any survey to see how many lots it covers.

Q. Yet you testified here that any one of those lots which is not affected by that easement would be worth the sums that you have testified separate and apart and considered as an individual lot? A. I said that if each one of those lots had no subway, or easement under it, they would be worth so much money and when it was all gathered together, or added, the element of plottage, then the entire lot becomes 25% less than it was—I mean, it would be that much affected.

2665

Q. How much does that plottage amount to? A. 12½%.

Q. How much is that, I say? A. $291,334.

Q. How much does the depreciation amount to? A. $655,500.

Q. If this property had been sold in separate lots, it would in your opinion be worth $291,000 less than what it would be worth in one ownership? A. No, I did not say anything about that.

Q. Didn't you say that you added $291,000 at 12½% by reason of plottage? A. If they had been sold off in separate lots, without any subway ease- 2666
ment, they would have been worth the sum of $2,330,666.

Q. Didn't you swear just now that you had added $291,000 for plottage? A. Yes.

Q. That is because two or more lots are in one ownership? A. Yes.

Q. If each one of those lots were in a separate ownership their aggregate value then would be $291,000 less than what you now value it? A. Yes.

Q. If, under those circumstances, this easement affected one lot, and you depreciated that lot 25%, say any one of those lots depreciated 25%, you 2667
would not get but a small percentage of the amount $291,000 which you have allowed as a depreciation upon them, isn't that correct? A. I think that sounds as if it is a correct mathematical proposition.

Q. So that when you come back to the proposition, isn't it absolutely necessary for you to give a fair and accurate judgment as to the value of the property, with the easement in existence, knowing just how much of that land is covered with that easement and where it is? A. No, it is not necessary to have this exact. I know that that

2668 easement covers a certain, approximately so much of an area.

Q. These same questions which I have asked you with respect to this Pershing Square property, that is, the value of the land, would apply exactly the same to the Commodore Hotel? A. Yes.

Q. And your answers would be the same? A. The same.

Q. Go to the Bowery Bank Building: How much did you value that property before? A. Total, $4,028,696, value of land $1,158,696, and the value
2669 of the building $2,870,000.

Q. How much did you depreciate that by reason of this easement? A. Ten per cent. because of the subway easement.

Q. Why did you depreciate this only ten and the other twenty-five? A. Because I did not think that these were affected any greater than that.

Q. Isn't it simply because you were told in the case of this building that the easement only went over a little corner of it? A. I knew that.

Q. So that the amount of depreciation after all depends upon how much of an area of the lot the subway easement covers? A. No, not in a mat-
2670 ter of percentage. I can realize that some easements might hurt a piece of property more than some other easement.

Q. But the reason that you did not give any more than but ten per cent. in this case was that you knew that the easement only covered a little piece of it? A. Certainly.

Q. Mr. Huntley, what did you value this after? A. $4,318,370.

Q. An increase of how much? A. $289,674, or $290,000.

Q. That is all in the land? A. That is the increase of value and the method of calculation is—

2671

Q. You have added the same value afterwards as before? A. Yes.

Q. So that you only lessened the land? A. I valued the entire property.

Q. Didn't you separate them? A. I made a separation in the calculation, but the value of the whole property is what I am valuing.

Q. Is the building worth as much afterwards as before? A. I said it was, yes.

Q. Then your depreciation is limited to the land? A. That is the method of calculation, and it changes the value of the land and not the value of the building.

2672

Q. What is your unit there? A. Unit lot on 42nd Street, $200,000, and that is before the taking, and after, $250,000.

Q. That is, you have given it an increase of $50,000 a lot? A. Yes.

Q. And the same on Pershing Square? A. Seventy-five.

Q. The next building, there are vacant lots there, or the next property, rather? A. The next property is two lots.

Q. And you value that at how much? How much before? A. Before at $377,000, and after at $498,000, and the difference was $121,000.

2673

Q. The same unit before and after? A. The unit of the lot before was $160,000, and the unit lot afterwards was $215,000.

Q. How much of an increase? A. $55,000.

Q. On the whole? A. Oh, $121,000.

Q. That is what percentage? How much per cent.? A. About 30%.

Q. 30%? A. About 33%.

Q. The next piece of property is the storage house on the south side? A. Yes.

2674 Q. How large a plot is that? A. 125 feet on 42nd Street and 175 feet on 41st Street, and 197 feet and 6 inches on Lexington Avenue.

Q. You valued that at what unit? A. Unit lot on 42nd Street before was $145,000, and after was $200,000.

Q. That is an increase of how much a lot? A. $55,000.

Q. The building you value the same before and after? A. The same before and after.

Q. How much was it? A. $800,000.

2675 Q. The opposite side is the Commodore Hotel, and you valued those lots at what before and after? A. $200,000 before and $250,000 after.

Q. That is an increase of $50,000? A. Yes.

Q. The building remained the same? A. Yes, sir.

Q. The Bowery Savings Bank, you gave it an increase of $50,000, is that it? A. Yes.

Q. But the property adjoining it on the east you gave a larger increase? A. Yes.

Q. Why is that? A. That is my opinion.

Q. Just your opinion? A. Yes.

2676 Q. This increase is more or less a matter of opinion, isn't it? A. Oh, I have made a careful study of all the sales, and I have been informed of resales at prices that were so much higher than mine that it almost influenced my judgment.

Q. On everything? A. Oh, no; these figures were made up before I knew anything about the sale, this sale only came out very recently.

Q. Let us have it all. This sale which you speak of indicates a larger figure than you have testified to, and if that is so, isn't it right that you should give it, because you are testifying under oath? A. I have not given it.

2677

Q. But you say that you gave it as to two lots adjoining? A. Oh, no.

Q. Adjoining the Bowery Savings Bank by reason of that sale? A. No, you misunderstood me.

Q. Take the Grand Central: How much of that did you value the year before and after? A. Grand Central before—

Q. I mean in area? A. What do you want?

Q. The area? A. 185 feet front by 208 feet deep.

Q. How much does that take you back? A. 208 feet.

2678

Q. How much back is that? A. I said 208 feet.

Q. In relation to the building that is on it? A. You could not measure it.

Q. Do you run into the tracks? A. I presume I would. I understand that the tracks are up there.

Q. You go back 208 feet? A. Yes.

Q. Don't you know where that would land you? That is what I want to know? A. I am not certain that it would land into—I think it would take over the underground tracks.

Q. How far over? A. I could not tell you because there was not an accurate survey that I could get.

2679

Q. It would land you eight feet north of the southerly line of 43rd Street? A. There is no 43rd Street.

Q. If it were projected there? A. But it is not there.

Q. Do you mean to tell this Court that you come in here to value a piece of land without knowing where the northerly boundary of it would be with respect to the Grand Central improvements? A. Yes, I mean that today. I know what it would be in a general way.

2680 Q. How much frontage did you estimate? A. 185 feet.

Q. What is that? A. It is a part; that would be part of the roadway which was acquired by the City, and part of the stores, entrance to the subway. The same space downstairs that is used by the railroad, the same that I think they let out.

Q. And some on the tracks? A. Yes.

Q. And the yard? A. No, just the tracks, I think.

Q. Where the trains come in? A. Where they

2681 work in there, or head in.

Q. What did you value that? How did you get at the value of that? A. I valued that the same as I would the Commodore, because I have taken the Commodore site, which was an actual thing, and this is land right next to it, and as it was all in the railroad's possession, and all being used by the railroad, I simply gave it the unit of value for the land.

Q. How much? A. $225,000 before, and $275,000 after.

Q. How much per lot? A. I just stated that.

2682 Q. Suppose the court had declared that railroad property used for railroad purposes was not benefited in law by this proceeding; what then would you say? A. I do not know what I would say.

Q. You have not been advised, have you, that so far as the railroad property is concerned the City cannot assess it, or that part of it which is used for railroad purposes in proceedings of that kind, for the reason that in law it cannot be benefited? A. I have not been advised about that, as there are several usages, I found, for this property.

Q. How much do you propose to extract in the

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way of benefit in the case of this railroad property? A. $620,000.

Q. And that $620,000 of these three million, $600,000 is railroad property, benefit resulting to railroad property and used for railroad purposes? A. No; used for street purposes, for stores and shops in the front.

Q. And also used for railroad yards and tracks? A. I think it runs back there.

Q. You do not know, do you? A. As nearly as I can judge it runs back pretty close to the heading of the railroad tracks but I could not survey it.

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Q. Are there any easements over this property, railroad easements? A. There is no easement over this property that I know of, except to the owner, and that is why I say that it is not subject to any easement. I do not know just what the status of that road overhead is, the street.

Q. Have you been advised whether the City has the right to assess what you say is being used for a roadway? A. I leave that to my counsel. I do not know anything about that legal status.

Q. But you are willing to come here and swear that a roadway can be benefited to the extent that a

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piece of property which can be improved and used is benefited? A. I have made my statement. I came here to appraise the property and give my idea, and the legal status I leave to counsel to state, and not to me.

Q. You are swearing to opinions, aren't you? A. Yes.

Q. And you know as a matter of fact that a part of the property that you are valuing is used as a street, dont' you? A. Well, I should say that it was.

Q. And you are swearing that in your opinion

2686 the street is benefited to the same proportion and the same extent as property which has improvements, and out of which you get an income? A. That is getting a little far beyond my powers of separation, and I cannot do that.

Q. What did you value the improvements on this Grand Central Property? A. $1,000,000.

Q. What did you include in that million dollars? A. Whatever buildings cover that portion.

Q. What would it be? A. I could not separate that exactly.

2687 Q. Just tell me how you made up your million dollars on these improvements? A. I have allowed one million dollars.

Q. You have done that in lots of different things here, haven't you? A. No; that is about the only one.

Q. Whereabouts in that structure would this westerly line go? A. Right next to the viaduct, the Park Avenue viaduct, 185 feet west of the Hotel Commodore.

Q. How did you get that $1,000,000? A. The total value of the Grand Central building, the property is $1,000,000.

2688 Q. You realize that you are under oath, don't you? A. Yes.

Q. And you must have some basis for it? A. That is my judgment. That was absolutely and purely a matter of my judgment, without going through any process of calculation.

Q. Is your judgment expressed here as to these other matters which you testified to as accurately as your judgment with respect to the Grand Central? A. The other properties have a unit to deal with, and I could go through a process of calculation which would give me a calculated judgment of value.

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Q. Is your judgment expressed here as to these other matters which you testified to as accurately as your judgment with respect to the Grand Central? A. Very much more accurately.

Q. So that you admit that this sworn testimony you have given here with respect to the Grand Central is not accurate? A. It is not very accurate as to the value of the building.

Q. Coming down to the next block, take the north side, that is the Long Beach Building? A. So-termed; I think it is called the northeast corner of Lexington Avenue and 42nd Street. It is the last parcel on my list.

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Q. What was your unit before and after? A. The value before, unit lot on 42nd Street $90,000. The value after, unit lot on 42nd Street, $110,000.

Q. How about the other street? A. Unit value before on Lexington Avenue, $90,000, and after $100,000. Unit lot on 43rd Street before $40,000, and after $45,000.

Q. How much is the building? A. And the buildings, $355,000 before and $355,000 after.

Q. Take the next property on the north side and to the east and go right through them, giving the size, and the units and the value of the building? A. The next property is known as No. 145 and 147 East 42nd Street, shown as two lots, each lot 25 feet 6 inches in width, in front, the westerly line 82 feet 9½ inches, the easterly line 78 feet 1½ inches, and the total rear line 33 feet 7½ inches; that was a four-story building; unit value of a lot before was $85,000, and the unit value of a lot afterwards was $100,000. The building, the value of the building was $20,000 before, and $20,000 after.

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Q. The next parcel? A. 151 East 42nd Street,

2692 lot 25 feet wide by 78 feet 1½ inches deep on the west line and 62 feet 8 inches deep on the east line, the rear lot being a gore. Unit lot before $85,000; unit lot after $100,000. Value of building, four-story brick, stores and loft, $25,000 before and the same afterwards.

Q. Go on. A. Next parcel, 153 East 42nd Street, a lot 25 feet wide and 75 feet 3 inches deep, four-story brick, stores. Value of the lot before $85,000; value of the lot after $100,000. Value of the building $15,000 before and after.

2693 Q. Have you taken in the whole north side? A. No. 155 and 157 East 42nd Street, size 50 by 100, with an L 25 by 25, which would run back of the property 153 East 42nd Street. The front building is two-story brick, and the rear is five stories. Unit value on 42nd Street, $85,000, before; unit value $100,000 after. The building value was $25,000 before and after. The next property is the northwest corner of 42nd Street and Third Avenue, 100 feet frontage on 42nd Street and 75 feet 3 inches frontage on Third Avenue; two-story brick building; unit value lot on 42nd Street, $85,000, before, and unit value on 42nd Street $100,000

2694 after. Value of the building $25,000 before and $25,000 after. That covers the north side of the street.

Q. Go to the southerly side of the street, the southwest corner of 42nd Street and Third Avenue? A. Southwest corner of 42nd Street and Third Avenue, size 100 by 100, three-story brick, store and hotel, and three-story theatre. Unit lot on 42nd Street before, $75,000; unit lot on 42nd Street after $90,000. Value of building $125,000 before, and $125,000 after. No. 156 and 158 East 42nd Street, lot is 41 feet 8 inches wide, and 98

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feet 9 inches deep. Building six-story, fire-proof, loft and store building which was in process of erection in 1923. Unit value for lot $75,000 before, and unit value for lot $90,000 afterwards. The value of the building is $30,000 before and after. This particular plot was subject for an easement for the Steinway Tube.

By the Court:

Q. For what purpose? A. They had an escalator in that particular part. They required it first for the purpose of doing the excavating work of hoisting out material when they were enlarging the Steinway Tube, and after that they put in a stairway and escalator, and then a ticket office, and that escalator remains there now. There is a space for narrow stairs on the front of the building and a used space in the rear of the building, next to the escalator, and there is a ticket office there.

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Q. Is it operated now? A. It was not, but there seemed to be somebody in the ticket office.

Q. There is a separate entrance to the Steinway Tube? A. Yes.

Q. Commencing with the platform at 42nd Street? A. I came out of it at one time and it was a separate station before we got to the 42nd Street station. The escalator was not working but it was there.

2697

By Mr. LaMotte (continuing):

Q. Go on. A. I allowed 40% for that easement.

Q. Your next parcel? A. No. 152 and 154 East 42nd Street, 41 feet 8 inches by 98 feet 9 inches; unit lot before $75,000; unit lot after $90,000. Value of building $80,000 before and $80,000 afterwards. That is a modern hotel. 148 and 150 East

42nd Street, size of lot 41 feet 8 inches in width, and 98 feet 9 inches in depth; this is a five-story brick, loft, store building; unit of lot before $75,000; unit of lot after $90,000. Value of building $25,000 before, and $25,000 after. The property known as the Goelet property at the southeast corner of 42nd Street and Lexington Avenue, 195 feet frontage on East 42nd Street and 148 feet 1 inch on Lexington Avenue, and 98 feet 9 inches in depth on the easterly line, and the rear line somewhat irregular. The buildings are three stories on the corner of Lexington Avenue and Murray Hill, theatre, and the entrance is—there is an entrance from Lexington Avenue and also from 42nd Street, and then a row of one-story stores, and the theatre dressing rooms run down almost to the easterly end of the lot, and about 50 feet back from 42nd Street. Unit lot on 42nd Street, $80,000 before, and $100,000 after. Unit lot on Lexington Avenue, $80,000 before and $90,000 afterwards. Unit lot on 41st Street $30,000 before, and $35,000 after. The value of the building is $150,000 before and $150,000 after.

(Adjourned to Monday, November 10th, 1924, at 10 o'clock A. M.)

New York, November 10, 1924.

TRIAL RESUMED.

Appearances: George P. Nicholson, Esq., Corporation Counsel, by L. Howell LaMotte, Assistant Corporation Counsel. James L. Quackenbush, Esq., Attorney for Interborough Railroad Company, by J. Osgood Nichols, Esq., of counsel. Murray, Aldrich & Roberts, Esqs., Attorneys for Manhattan Railway Company, by William Roberts,

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Esq., and William D. Embree, Esq., of counsel. William H. Page, Esq., As *Amicus Curiae*, etc. Davies, Auerbach & Cornell, Esqs., Attorneys for Central Union Trust Co., by Andrew Macrery, Esq., of counsel.

ROBERT HUNTLEY, resumes the stand in behalf of the claimants, and testified as follows:

Cross examination (continued) by Mr. LaMotte:

Mr. Page: I wish to have it specified on the record that the 42nd Street Owners & Merchants Association is here in this matter as *Amicus Curiae*, representing its members as such, and not as property owners interested in the improvement of the civic conditions of the City, and that I appear as *Amicus Curiae.*

2702

Mr. Roberts: Our point is that you can note that if you want to, but you are bound by whatever you have done in this proceeding.

Q. Mr. Huntley, when did the Bowery Savings Bank purchase that property, that is, where the building is? A. 1921.

Q. From whom did they purchase it? A. From the Mandell-Ehrich Company.

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Q. And they gave as I understand it, $1,400,000? A. Yes, sir.

Q. That was in 1921? A. Yes.

Q. You valued that same property, that same piece of property December, 1923, at what, the land, the one before the title vested? A. The one before the title vested at $1,158,696.

Q. That was approximately $240,000 less than what it sold for two years before that? A. Yes.

Q. Do you mean then that when the Bowery Bank bought that property they paid $240,000 more than it was worth? A. I mean that they paid over

2704 $200,000 more than it was worth with the elevated structure there in perpetuity.

Q. Answer my question. You have given in December, 1923, approximately $240,000 less than what that property sold for in 1921, haven't you? A. Yes.

Q. And you have sworn that that was its market value on December 7, 1923, haven't you? A. Yes.

Q. I ask you again, in your opinion did this bank pay in 1921 $240,000 more than the property was worth at that time? A. They did pay $240,000

2705 more than the property was worth at that time.

Q. When did the Pershing Square Company buy that property? A. 1920.

Q. What did they pay? A. They paid $2,900,000.

Q. Did they pay more than the property was worth at that time? A. They paid more? No; they paid just about what I said the property was worth at that time. I expressed an opinion that it was worth about $3,000,000 and odd dollars, and they paid $2,900,000.

Q. Take that vacant property they bought in 1920, did the Pershing Company pay that? A.

2706 Yes.

Q. What was it worth in 1919? A. In 1919 I think I stated that it was worth about $3,000,000, about that time; I was asked about that several times, and I made a statement that it was worth $3,000,000, that is the entire property.

Q. In 1919? A. About 1919, or 1920. There was quite some discussion about a purchase of the property at private sale, and our office was figuring about it before it was put up at auction, and I know that I expressed an opinion about it on three or four occasions, perhaps more than that, at about $3,000,000.

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Q. What was it worth in 1918? A. I am not prepared to say what it was worth in 1918.

Q. What was it worth in 1917? A. I think the same answer, but I am not prepared to say.

Q. Were there any other sales on 42nd Street prior to December 7, 1923, between 1919 and 1923 besides the Pershing Square and the Bowery Savings Bank? A. There were.

Q. I mean opposite this structure? A. I presume you refer to the section between Third Avenue and Park Avenue?

2708

Q. Yes. A. I have a list of those sales, 1920, Joseph P. Day sold at auction 156 and 158 East 42nd Street on the south side near Third Avenue.

Q. Wait. Let us go to that first. What is the size of that property and what did it sell for? A. Plot 41 feet 8 inches by 98 feet 9 inches with a three-story building on it, and sold for $130,000.

Q. What did you value it at in this case before the vesting of title? A. Before the vesting of title I valued the land at $82,500.

Q. And the building? A. And the building at $30,000.

Q. Making how much? A. $112,500.

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Q. What did it sell for? A. It sold for $130,000.

Q. What is the date of the sale? A. 1920.

Q. So that you valued it less than what it sold for in 1920? A. I did.

Q. What other pieces of property were sold? A. In March, 1923, sale of property No. 156-158 East 42nd Street, they sold to the Mandell-Ehrich Corporation for $155,000.

Q. That was before December 7, 1923? A. That was.

Q. What other sales took place between 1919 and December 7, 1923? A. February, 1923, north-

2710 west corner of 42nd Street and Third Avenue, 75 feet 3 inches on Third Avenue, and 100 feet on 42nd Street, with five two-story brick tenements and stores, sold for $290,000, and it was subject to a lease which the purchaser of the fee acquired making a total sale there of $325,000.

Q. What did you value that, after that, in December 7, 1923? A. After December, 1923?

Q. No, after the sale? A. Do you mean before the taking?

Q. Before the taking? A. The total value of the
2711 property I put at $418,000, the land at $393,000 and the building at $25,000.

Q. Isn't it a fact— A. One more sale, do you want that?

Q. Yes. A. In October, 1923, the southwest corner of 42nd Street and Third Avenue, 100 by 100, with three-story brick theatre and three-story brick store and hotel, the same buildings that were there in December, sold for $425,000.

Q. What did you value that at in this case? A. I valued that before the taking at $533,000.

Q. And after the taking? A. And after the tak-
2712 ing at $615,000.

Q. Those buildings, did they go at that sale? A. The land, the buildings had been erected by a lessee.

Q. What did you value the land at in December, 1923? A. The land was valued at $408,375 before the taking.

Q. And what did it sell for? A. $425,000.

Q. In the case of the sale that you spoke of on the other corner, did the buildings there belong to the owner of the fee? A. No.

Q. What did you value that land as separate from the buildings in that case? A. Before the

2713

taking I valued the land at $393,000, and after the taking the value of the land was $487,000.

Q. What did the land sell for before the taking? A. Before this taking it sold for $290,000.

Q. Just the land? A. That is what the purchasers got. They afterwards negotiated for the rest, making the total sale $325,000, which would make $350,000, which they paid for the lessee's interest, whom, I believe, owned the building.

Q. Isn't it a fact that in fixing the value which you have given before the taking you have valued the property without any benefit that resulted to it up to that time by reason of the prospective removal of the structure? A. Yes.

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Q. So that in your testimony as to the benefit that resulted to this property by reason of the vesting of title, you have included that benefit that went to this property, prospective benefit that went to this property between the passage of the act, authorizing its condemnation, and the date of title, the date that title vested? A. Yes.

Q. Take your values after the vesting of title: How far in future did you take the prospective benefit that might result to this property by reason of the vesting of title? A. The immediate benefit I did not go—I figured that that benefit resulted immediately.

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Q. You mean even before the tearing down of the structure? A. Yes.

Q. In other words, immediately after that same day, after the title vested there was that much value in the way of benefit added to that property by the vesting of title? A. That must be done theoretically in all condemnation cases, and so that is the amount of value which I allowed that immediately accrued.

2716 Q. There were no sales that took place immediately after on the same date? A. Not the same date.

Q. So that while you say theoretically that transformation took place, you must admit that it takes a period of time in order to realize the benefit that flows from that removal? A. There must be, when you begin a proceeding and carry it on for five years.

Q. I am talking about after the vesting of title? A. After the vesting of title?

2717 Q. Yes. A. That probably would take some time to show the exact benefit. In this case I was low by actual transactions later.

Q. That is the reason you have said that this change took place on that very day? A. That is what I was there—that is what I was limited to, and the knowledge I had and my judgment.

Q. What you have done with respect to this Bowery Savings Bank property, that is, eliminated the prospective increase from the time of the passage of the Act, until the adjudication, up to the vesting of title, you have done that in all of these properties? A. Yes, sir.

2718 Q. If that is the case, Mr. Huntley, the Bowery Savings Bank has paid to the people who sold the property to them about $240,000 worth of benefit that resulted to that property by reason of this adjudication; isn't that correct? A. A broker in the case so stated to be, that they had done it.

Q. If the method of valuation is pursued by the Court here that the railroad contends for, then this Bowery Savings Bank will again have to pay that money over to the railroad? A. Not if they take my figures they won't.

Q. It is your opinion, isnt' it, that this $240,000

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worth of benefit ought to have gone to the railroad instead of to the other property? A. What?

Q. It ought to have gone to the railroad, according to your own idea?

The Court: Ought to have gone, or ought to go, do you mean?

Q. If that is the method of valuation, they have paid $240,000 to the Pershing Square Building that ought to have gone to the railroad, and the same way with all these properties? A. I cannot tell. I do not think I can answer that question. I have not thought of it in any such light.

2720

Q. Take the Pershing Square Building, you have not stated in your record up to now what valuation you place upon the lot facing 41st Street? A. Facing 41st Street?

Q. Yes. A. Before the taking?

Q. Yes, before. A. $85,000; after the taking $100,000.

Q. That is a benefit of $15,000 a lot? A. Yes.

Q. What portion of that building—how many stories high is it? A. Twenty-four.

Q. What portion of that building did you think would receive a benefit by the removal of the structure and the forfeiture of the franchise? A. The entire building.

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Q. You mean each floor? A. Each and every floor would receive some benefit.

Q. As I understand it, you are testifying that this particular benefit which you are giving here is due entirely to the return to these owners of three easements of light, air and access? A. Yes.

Q. What story did the structure pass? A. Third story.

Q. All the stories above the third floor were above the structure? A. Yes.

2722 Q. So far as the easements of light and air are concerned, those stories received no benefit from the tearing down of the structure, did they? A. I think not. I think the light and air would be the same up on the fourth story.

Q. So far as access is concerned, you think each story would receive the same benefit? A. I did not say that, but I say that the entire building would receive some benefit.

Q. Up to the second and the third story— A. Third story.

2723 Q. You have considered that the first and second and Third stories would receive a benefit by the return of all three elements, three easements; is that right? A. Yes.

Q. Above, by the return of only one easement? A. I did not testify to that. I said the whole building would be—if you attempt to separate it—

Q. Didn't you just testify that none of those stories above the third would get any benefit from the light and the air? A. Not direct benefit in the way of having increased light and air.

Q. Tell us what, in your opinion, is the effect of the return of these three easements on the first 2724 and second and third stories, and what is the effect of the return of the same easements above those stories? A. The building has poor access.

Q. I mean in dollars and cents? A. I have not made a calculation of that as to the rental increase. I have a separate value of each floor.

Q. As to how much damage would you give here due to the return of the three easements to the first and second and third stories, and how much benefit by the return of the easements to the stories above? A. I have not attempted to separate it.

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Q. This building is a modern and permanent improvement? A. I judge that it is.

Q. And probably for years to come? A. I do not know about the future, but it probably—it was intended to be a permanent structure.

Q. How much benefit have you alloted to that portion of those lots which abut on 41st Street? A. I have not separated it at all.

Q. How much did it amount to? You have separated it. You said that you valued those lots at $85,000 and $100,000 after; that is, $85,000 before and $100,000 after? A. I appraised the whole property.

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Q. How much does that difference amount to on the 41st Street side? A. I shall have to figure that, if I may have a piece of paper.

Q. (Paper given witness.) A. In the set-up I have taken only one lot as fronting on 41st Street, and one lot on 41st Street before was worth $85,000 plus the element of plottage, which accrued to the whole thing and after the taking one lot on 41st Street was valued at $100,000, plus an element of plottage, when it is all used together.

Q. Which way did that lot face? A. On 41st Street.

2727

Q. How much frontage is this property? A. Twenty-five feet—

Q. No, the whole of the property? A. 125 feet 6 inches.

Q. And the others you face on Park Avenue? A. Certainly.

Q. What was your value of Park Avenue lots back of the one hundred feet frontage on 42nd Street before and after? A. The Park Avenue frontage?

Q. Yes. A. Before the four lots which I fronted

2728 on Park Avenue would be valued at $734,666, to which would be added the element of plottage, and after those four lots would be valued at $933,-334, plus the element of plottage. Of course they were afterwards subject to the reduction because of the subway easement.

Q. Then the benefit which you have given to that portion of this property which has its frontage on Park Avenue and 41st Street, and being south of the 100 foot line, amounts to how much? The total amount? A. $218,668, to which might be

2729 added the element of plottage, and then—

Q. What is the total? A. $184,500.

Q. How many entrances has that building? A. Three.

Q. One in the centre on Park Avenue? A. Yes; and one around on 42nd Street and one on 41st Street.

Q. Do you know the arrangement of the inside of that building? A. I have been in it.

Q. Do you know the division? What is it? An office building, or what? A. Stores and offices.

Q. Do you know how the stores are divided up? A. I had a floor plan of the ground floor, and the

2730 upper floors were divided, but not all these buildings. They make a tentative plan and then divide them up to suit their tenants. I think that building is largely rented in quite large spaces, and tenants have made their own divisions.

Q. Take the plan of the floor ground, how is that divided? A. The ground floor?

Q. Take the second floor, how is that divided? A. The second floor is kept all intact. The second and third floors were rented for the Pacific Bank Corporation.

Q. How was it divided up? A. It was kept open.

2731

The second floor really takes in the second—they rented so much of the second and third floor.

Q. How many stories is this? How many flights up? A. This is the second and third floors, and the lease is supposed to cover the second and third floors. That is what the lease says.

Q. Have you figured out in that building how much of it in the way that it is divided received light and air from 42nd Street? A. I have not.

Q. Have you figured out to ascertain of the tenants that occupy that building, what percentage of them use the 41st Street entrance, and what

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percentage of them use the Park Avenue entrance? A. I have not.

Q. Take this storage house that is on the southwest corner of 42nd Street and Lexington Avenue— A. Southwest corner—yes, that is right.

Q. You have testified that the vesting of title in the City benefited that property $528,000, is that right? That is, the Manhattan Storage Building? A. Yes.

Q. That runs through from 42nd to 41st Street? A. Yes.

Q. How many stories high is it? A. Eight stories and twelve stories.

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Q. Where are the eight stories? A. On Lexington Avenue and 42nd Street.

Q. And the twelve stories? A. Eleven stories, that is that rear addition—change that to eleven stories.

Q. Where is the addition, on 41st Street? A. On 41st Street, yes.

Q. What is that building used for? A. Storage warehouse.

Q. Furniture? A. Furniture and jewels and furs and safe deposit, and everything.

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Q. What frontage has that on 41st Street? A. 125 feet.

Q. What did you value those lots before and after taking—first, I think it has more frontage on 41st than on 42nd Street? A. Yes; 175 feet on 41st Street and 125 feet on 42nd Street.

Q. Just state what you valued the 41st Street frontage at before and after, and how much benefit did you give to that? A. Two lots on 41st Street at $65,000, which is $130,000—no, that should be three lots, and then I valued those same lots afterwards at $75,000 each—that is $65,000 and $75,000.

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Q. You mean the reverse of that, don't you? A. No; before they were worth $65,000 a lot, 41st Street lots and after they were worth $75,000 per lot. I used the unit there on 42nd Street and on Lexington Avenue, and then the remainder on 41st Street.

Q. Take Lexington Avenue, what difference do you make there? A. On Lexington Avenue the value, I valued those at $80,000 each and afterwards at $90,000.

Q. How many? Four of them? A. There are four of them, practically four. The exact figure is 97 feet 6 inches on Lexington Avenue.

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Q. That means that you have increased that portion of this property back of 100 feet which fronts on 42nd Street at how much? A. The amount there is $188,000.

Q. Does that include plottage? A. That includes plottage.

Q. How many entrances has this building? A. That has an entrance on 42nd Street and an entrance on 41st Street, and an entrance on the corner, which is the main entrance. The entrance to

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the building is right on the corner of Lexington Avenue and 42nd Street.

Q. That is the main entrance to the office? A. Yes.

Q. I am speaking about the entrance to the storage part? A. It has an entrance on 42nd Street, and it has an entrance on 41st Street.

Q. This annex, which is on 41st Street, the entrance to that is on 41st Street, isn't it? A. I think the entrance there is on 41st Street.

Q. Do you know whether the entrance on 41st street even goes back to that annex? A. I do not know, for the moment, but I think it is connected with the elevator, so that the stuff is lifted from the first floor and then distributed over the floors; that is my recollection of it.

2738

Q. You are not able to state, and you did not consider when you fixed those figures whether or not the entrance for storage purposes to the annex on 41st Street was an entrance from the— A. What is that?

Q. The entrance for trucks to the storage for storage purposes was entirely from the 41st Street side so far as that annex is concerned? A. So far as the annex is concerned, I think the entrance is on 41st Street, that part of the building, and when you get above the first floor, the stuff is delivered all over there.

2739

Q. Is there an elevator in the annex? A. I think not; I think the elevator—

Q. Do you know? A. No, I do not know about that.

Q. Have you made an investigation to find out what portion of this building receives light and air from 42nd Street? A. Up to about three stories of this building.

2740 Q. How far across—does the annex receive any? A. Directly, no.

Q. Have you given the appreciation, or considered that every floor in this building was benefited by reason of these easements coming back, which you did in the case of the Pershing Square Building? A. Surely; I figured in the entire structure, that the entire structure would be benefited by reason of the removal of the structure, by the recovery of the easements of light, air and access.

Q. You have done that in the case of all this
2741 property which has buildings on it, three or more stories in height? A. Yes.

Q. And you have given a benefit by reason of the return of these easements in all cases to the rear lots, where there is property running from 42nd Street to the next street? A. Where it is all in one ownership, yes.

Q. You have done that even in the case of the Commodore Hotel? A. Yes, sir.

Q. And in the case of the Grand Central Station? A. And in the Grand Central Station case I had to take out a hypothetical portion of the
2742 building.

Q. And so far as you considered it, you did that? A. Yes.

Q. You did it in the case of the Long Beach Building? A. Yes.

Q. How long is the Long Beach Building? A. 197 feet 6 inches on—

Q. Does it extend all the way from 43rd Street where there is an entrance? A. The main entrance is right at the centre.

Q. On what street? A. Lexington Avenue.

Q. How much of your benefit is due to the portion which is on 43rd Street, north of the entrance,

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which you say is midway between 42nd and 43rd Streets? A. The value of that difference would be $695,250—that is for the northerly half of the frontage on Lexington Avenue, running down to 43rd Street, the value after taking would be $750,000, leaving the amount of benefit allotted to that particular portion $54,750.

Q. What is the total benefit? A. The total benefit is $251,000.

Q. Has this building an entrance to 43rd Street? A. I think not; I did not see any. It has only store fronts on 42nd Street.

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Q. How many rooms—this is an office building, isn't it? A. Office building upstairs.

Q. How many rooms face on 42nd Street? A. I think, if you follow the original lay-out that—

Q. I do not care about that. I mean the present lay-out, that is in December, 1923? A. In some cases they take the whole of the floor right through.

Q. How many of them with the whole floor? A. I think two.

Q. How many stories is that? A. Five, and three flights up.

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Q. So far as the portion of the building which has rooms fronting on 43rd Street, and the portion of the building that fronts on Lexington Avenue, and not on the corner of 42nd Street, they did not get any additional light or air by reason of the removal of this structure? A. I think in regard to the actual physical fact they did not.

Q. If the access to this building is on Lexington Avenue, they did not get any additional access, did they? A. They certainly would be benefited by the—

Q. I am talking about the additional access. A. The direct access from Lexington Avenue, would

2746 not be affected. Let me say that there is a pillar on 42nd Street and off from the corner of the curb, and it would affect access right on Lexington Avenue.

Q. But beside that one pillar the access is just the same? A. So far as traffic on that street is concerned it would be the same.

By the Court:

Q. Would not the access to that in general be affected by the removal of this structure? A. The
2747 direct entrances into Lexington Avenue, the doorway would not be affected, because there is nothing to be removed in front of the Lexington Avenue place, except this one pillar.

By Mr. LaMotte:

Q. Take the Commodore Hotel, that you considered, did you consider that the floors above the third were benefited by the removal of the structure? A. I think the entire, all the floors were benefited.

Q. Do you think the portion of the building
2748 which fronts north on 43rd Street is benefited by the removal of this structure? A. Certainly.

Q. It is not benefited by the return of light and air, is it? A. The direct return of light and air, as a physical matter, the north side of that building is not affected; just as a physical matter it is not affected.

Q. Mr. Huntley, were you advised by your attorneys that in these elevated railroad cases the owner of a property like the Pershing Square Building would be entitled to recover from the railroad a damage based upon a damage to the land back of

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the 100 foot frontage on 42nd Street? A. I do not think that I was advised—

Q. One way or the other? A. One way or the other.

Q. Did you value the land in the case of the Commodore Hotel back of 100 feet facing 42nd Street, at the same rate per city lot as you did the front land? A. No, I gave—I took a certain unit for the 100 feet deep, and valued it by the Davies method.

Q. You did not adopt an average unit for the whole? A. No.

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Q. You valued a building two hundred and some feet deep from 42nd Street? A. Yes; and I said a standard lot was worth so much and other lots were worth so much.

Q. What did you value the land under the Commodore on 43rd Street? A. There is no land there, on 43rd Street. There is not any such street.

Q. You did not consider it as a street? A. No.

Q. What did you value that land back of the 100 feet on 42nd Street? A. I did not separate it.

Q. You did not separate it? A. No.

By the Court:

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Q. What covers the property formerly on 43rd Street? A. The north part of the railroad company's property; that is in the fee of the New York Central Railroad Company and they covered it with some structure.

Q. Is it used now as a driveway? A. Private and it is not 60 feet wide. That building goes over eight and one-third feet—over the old line of 43rd Street before it was closed.

Q. Is it not open to the public at all? A. No, it is a private street, private right of way. The

Railroad Company own the fee which they acquired from the City in this general proceeding for the rearrangement of the Grand Central Assembly.

By Mr. LaMotte:

Q. What is that? A. I told his Honor that first the Commodore Hotel goes over eight and one-third feet on the line of old 43rd Street as it existed, and that the title to 43rd Street was given to the Grand Central at the time they made the arrange-
2753 ments for the Grand Central Passageway, and so forth.

Q. I know. They were to build on it and never did. What I am after now is to find out what you valued the land north of the 100 foot lots facing on 42nd Street? A. The calculation that I made would help you. I said that a lot 100 feet deep before the taking was worth $200,000 a lot; 208 feet was worth $305,000.

Q. What was the difference? A. I will have to do some figuring there, and I will try to do that for you.

2754 Q. That is a case of subtraction, isn't that right? A. You have nine inside lots, and a key lot, the corner lot.

Q. Don't go into that; we have that. What I want is this: How much benefit do you attribute to the building which is back of the 100 feet on 42nd Street? A. That calculation of the difference between 100 feet and 208 feet would roughly amount to $1,350,000, roughly.

Q. Before taking? A. Afterwards, $1,750,000, so that the properties, $300,000 approximately, would have a division as to the benefit in the rear.

Q. Mr. Huntley, you have also considered, have

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you not, in a general way what the effect of this improvement is, say on the portion of 42nd Street between Fifth Avenue and Park? A. Yes.

Q. That would be a benefit? A. I think it would be a benefit in a general way to the property between Park and Fifth Avenue.

Q. You know that the Board of Estimate and Apportionment is of the opinion, and has said so in its determination, that this benefit would extend, —even extend down to 33rd Street and north up to fifty some street? A. I understood that they have carried it down to 34th Street and as high as 57th Street.

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Q. You would consider, would you not, that property on 41st Street, opposite this storage house would receive some benefit from this general improvement? A. I think that it would receive a general benefit, the whole neighborhood.

Q. You were not asked to include that in this sum of $3,600,000? A. In this sum of $3,600,000, I do not think they were to get the benefit of the light, air and access which deprived the 42nd Street property.

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Q. But on one side of 42nd Street, you have considered the line benefited to a larger extent, and have included in that, in your $3,600,000, yet you admit on the south side there is a benefit, but you have not included it in this sum: That is so, is not? A. That is so.

By the Court:

Q. I understood that you did that because this property was in one ownership, is that so? A. Yes, in giving a value on 41st Street, it has been improved also from street to street.

2758 *Claimants' Witness—Robert Huntley—Cross.*

By Mr. LaMotte:

Q. Suppose you had a piece of property in one ownership with a building on 41st Street and a separate building on 42nd Street, what would you have done in a case like that? A. I think under the conversations which I had with counsel I would probably have—I would, if it went through, I would probably give a benefit to the land right straight through as one ownership.

Q. You have acted as an expert in street open-
2759 ing cases, haven't you? A. A great many times.

Q. Many of them? A. Yes.

Q. You have been in some street openings where I represented the City? A. Yes.

Q. Take Seventh Avenue? A. Yes.

Q. Do you remember what property you valued there? A. The southwest corner of West Broadway and Franklin.

Q. The Barron Building? A. Yes.

Q. Is that the only property that you valued in Seventh Avenue? A. I think that was the only property that I testified to in that Seventh Avenue proceeding.

2760 Q. Do you recall ever having testified in a street opening proceeding where there was an entirely new opening, new street opening, not a widening? A. Just at this minute I do not know, and yet I probably have. I do not remember just that case at the moment.

Q. You know the theory of street openings, don't you? A. I have heard it expounded by counsel a number of times.

Q. You know that the City acquires the fee to hold in trust for the purposes of a street; isn't that right? A. Yes.

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Q. And that the abutting owners on that new street get easements of light, air and access over the land which the City has taken for a street; isn't that right? A. Yes.

Q. In other words, these easements of light, air and access come to the benefit of the property which abut upon that new opening? A. Yes.

Q. If you were asked to testify to the value of property taken by the City in one of those cases how would you determine it, and how do you determine it in every case that you have ever testified to, the value of the land taken and the building or land alone, in the case of the opening of a new street? A. I have valued the property before the taking and after the taking, and in most instances I have—in those instances where an entire holding was taken I simply valued it before because it was a total loss, and if they separated a parcel I figured the entire parcel before and the value of the remainder.

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Q. State the case where the property is entirely taken, like in this case; isn't it a fact that you fix the value of that property, and do it in all cases on what it is worth in the market? A. Yes.

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Q. If it is an improved piece of property you take into consideration its income, don't you? A. You take into consideration the income.

Q. Take the Barron Building, you base the value of that entirely upon what it would have sold for, based upon its income? A. No, I valued the land and the building.

Q. Together? A. No, the income was sort of corroboration of the value of the land.

Q. Do you know whether in any case in a street opening where you have been called upon to testify to the value of the entire piece of property that

2764 is taken in the proceeding, you took into consideration at all in estimating the value the benefit that flows to the property that gets the easements of light, air and access over the street? A. I do not think I ever did.

Q. Did you take into consideration in arriving at the fair market value of the property in a situation like that, the amount of money which these abutting lot owners could afford to pay to the people who owned the land in the bed of the street, in order to get these easements of light, air and

2765 access? A. I do not think I ever did that.

Q. Isn't it a fact that in every case where you have testified before, you have always fixed the value of the property taken without any regard whatsoever either for the purpose of increasing the value of the property or diminishing it, the benefit that results to the property by reason of the taking? A. That is a little involved. I think I might say that I have never considered the benefit which would remain to the accrued property, and the result to the remaining part of the property by reason of the taking of the land for a

2766 street.

Q. In other words, you have never increased the value of the property by reason of the fact that these abutting owners are going to receive easements of light, air and access when the street is made? A. I think I have never done that.

By the Court:

Q. Have you always considered the value of the land to the condemnee rather than to the condemnor? A. Yes, sir, the rule being that we should establish a fair market value, as if it existed.

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By Mr. LaMotte:

Q. Whether condemnee or condemnor, you never considered the value of that property so far as its worth to the abutting owners for the purpose of a street is concerned, have you? A. I think not, but the fair market value as it stood at the time of the taking.

Q. Without regard whatsoever to what it is worth to the abutting owners for a street? A. Without regard to any increment value, which the abutting owners would obtain from having a street opened.

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Q. This is the first time you ever did it? A. In this particular instance?

Q. Is it or is it not? A. This is not a street opening.

Q. Oh, it is not? A. No.

Q. When you considered these easements, were you advised by counsel, that these easements were extinguished or acquired when this railroad was put up? A. When the railroad was put up?

Q. Yes? A. Were the easements to the property owner, or to the railroad extinguished?

Q. You know what I mean. A. When the railroad was put up they were acquired by the Railroad Company and they were paid for by the Railroad Company in a great many instances, and in other cases they acquired them by what they term "prescription."

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Q. You did not answer my question. Did you consider that the easements were extinguished by the erection of the elevated, or did you consider that the title had been taken over and passed to the railroad?

The Court: You mean the railroad when the

2770 structure was first erected, before any proceedings had been taken at all?

Q. First, when they were erected, did they advise you on that at all? A. I do not think that I have been advised on that nice point.

Q. Going down to the time when they paid the damage and got the releases, did you assume then that the title to the easements passed to the railroad, or that they were extinguished by the erection of the structure? A. I presume that they passed to the railroad, as near as I could under-

2771 stand it, and I understood that that was the absolute legal status.

Q. Did you in fixing this amount of benefit, $3,600,000, did you consider that the railroad would have a right to cease the operation of this spur, abandon its franchise and tear down the structure without permission from any public authority? A. I did not.

Q. Did you assume that there would be required first a permission from the Legislature? A. I did not assume that situation at all.

Q. Did you take that into consideration? A. I

2772 am not a lawyer.

Q. Did you consider that at all? A. That particular feature, no; I figured what that—when that law had been passed it was taken from them.

Q. In other words, you consider that because the City was authorized to condemn, then the City should be required to pay the amount of benefit; is that all there is to it? A. I assumed that if the easements were taken away from the elevated railroad, and they had paid for them, somebody had to pay for it. I do not know whether it is the City or the property owners, or who, but somebody had

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to pay for it, they had a right to be paid for it, what was taken away from them.

Q. Did they tell you how many of these easements were taken by prescription? A. I thought I had some memorandum of that.

The Court: That appears clearly on the record, does it not?

Mr. LaMotte: Yes, your Honor.

The Court: Isn't that in the record, now, Mr. Nichols, the cost of these easements?

Mr. Nichols: Yes, I think we put that in evidence. We put in evidence the deeds, and that 2774
shows a recital, but I do not know whether that is complete, and I would be very glad to go into that proof, based upon the proportionate value of the property at that time of those transfers, applying the same proportion to the assessed values of the property at the present time.

Mr. LaMotte: That has nothing to do with it.

Mr. Nichols: I think it has.

Q. Did you assume, Mr. Huntley, that these easements could be conveyed and sold? A. Yes; I saw a deed of one of them that was sold and conveyed.

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Q. Also could be leased and rented? A. I presume that in the case that the deed recites that the Manhattan Railway had purchased—had acquired from the owners of the abutting property the street easements of light, air and access necessary to the unimpaired right to the maintenance of a spur and that the property was afterwards leased to the Interborough.

Q. As a railroad? A. It simply states that it was leased.

Q. I am talking about these easements? A.

2776 *Claimants' Witness—Robert Huntley—Cross.*

These easements of a similar sort were acquired and leased and conveyed afterwards.

By Mr. Nichols:

Q. Sold? A. Yes.

Mr. LaMotte: I move to strike out the answer. Denied. Exception.

By Mr. LaMotte:

Q. Have you that deed with you? A. (Paper produced by the witness.) I am not certain
2777 whether this is the original, but I would say that it is a copy.

Q. Where is the spur that you are talking about? A. That was on Greenwich Street at Morris Street, and ran off of the main line of the elevated railroad, what used to be their old Lost and Found Department, and storage place there, which existed for many, many years, and was afterwards taken into the Cunard Building.

Q. Was this spur which you say was conveyed to the Cunard people, or now occupied by the Cunard people, the one that is now occupied by
2778 them, by the Cunard building in the street? A. Yes.

Q. What street? A. Greenwich Street, across Morris.

Q. This Cunard building occupies the part where the subway was taken down? A. I think not. It may be just at the end of the spur, but it is a piece of property that was where this spur ran up to the leased property, addition of the Manhattan Elevated was there for years. A storage place,—it was a division of the Manhattan Elevated, and a storage place, supplies and one thing and another.

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Q. Was it used as a railroad? A. Yes; I have seen cars standing on it.

Q. Is it a part of the railroad? A. It was used as part of the railroad.

Q. Was it a part of the main tracks? A. No.

Q. Was it a switch? A. It was a spur, certainly not the main line.

Q. Did the spur go anywhere? A. Yes; it went up to the property of the Interborough on Morris Street.

Q. Did they have a station there? A. They had a lost property division there.

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Q. Storage place? A. Storage, and some offices, and one thing and another, a variety of things in there. I was in there years ago.

Q. Do you know whether in this transaction any real estate besides—any land went with it? A. All I find is that they had this easement for the spur and they conveyed the easement.

Q. Nothing else? A. That is what I read there.

Q. What did they do with the easement? A. Who?

Q. The Cunard building? A. Took down the spur and recovered light, air and access to their building.

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Q. Do you know whether this is a part of their franchise? A. I am not posted on franchises, but it was property that was there and being used.

By the Court:

Q. How long was this spur? A. I think about 54 feet; I think the description is there.

By Mr. LaMotte:

Q. Do you know whether the Cundard building occupies the land upon which the spur was? A.

2782 No; they occupy the land on which the old building was.

Q. What old building? A. Storage building and lost property division.

Q. Where the spur ran to? A. Yes.

Q. Who owned that building? A. The Manhattan Elevated, I understood, but it was taken from them—I think it was sold by them, I mean, to the City of New York, for the purposes of getting a subway, an easement under it.

Q. Who sold it to the Cunard people, this land?

2783 A. This land?

Q. Where the house was, the storage was? A. I am not sure, but I presume that the City of New York sold it to the Cunard people.

Q. You do not know whether the railroad did? A. I think the railroad sold it to the City, and the City sold it to the Cunard; that is my recollection of it.

Q. What is there now, where the Cunard spur was? A. Street.

Q. What street? A. Morris Street and Greenwich Street.

2784 Q. Where does it end? A. About there, right there at Greenwich Street.

Q. Where does it end? A. About right there at Greenwich Street.

Q. Did they tell you whether or not they had disposed of what belonged to their franchise? A. I do not remember that they told me that. I do not think that I know enough about their franchises to tell you that.

Q. Did they tell you about the Act being passed by the Legislature in 1891 permitting the elevated railroad company to remove their elevated structure along certain lines and under certain condi-

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tions? A. I do not think he did, I do not remember.

Q. Did he ever tell you about the Brooklyn Rapid Transit removing more than a mile of elevated railroad structure under the provision of that Act of the Legislature in Brooklyn? A. I do not think so.

Q. In Myrtle Avenue? A. No, I do not remember his telling me that.

Q. And York Street? A. I do not remember.

Q. Did they tell you that in that case the railroad did not get a dollar from the abutting owners? A. I do not think I heard anything about that.

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Q. You do not know anything about that? A. No.

Q. But they told you about this particular case? A. Surely.

Redirect examination by Mr. Nichols:

Q. It has been testified that they abandoned the elevated railroad on Myrtle Avenue, the railroad got permission to abandon the railroad there in Brooklyn, didn't they? A. I do not know anything about it only from Mr. LaMotte's remarks and I judge that they abandoned it.

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Q. You do know that the easements of light, air and access formerly taken by the spur in Morris Street was sold and conveyed by deed to the Cunard people for a consideration of $18,000 mentioned in the deed? A. Yes.

Q. You have the deed there? A. Yes.

Q. And that that deed was recorded April 5, 1920, Liber 3146, page 380? A. Yes.

Q. That is what you had in mind? A. Yes.

2788 *Claimants' Witness—Robert Huntley—Redirect.*

Mr. Nichols: I offer the deed in evidence so as to have the matter perfectly clear on the record.

Mr. LaMotte: I object to that going in evidence on the ground that it is not cross examination. You cannot prove by direct evidence sales of property other than those taken in this proceeding.

The Court: I will take it for what it is worth.

Mr. LaMotte: Exception.

(Paper received in evidence and marked Claimants' Exhibit T.)

2789 *By Mr. Nichols:*

Q. On cross examination you were asked whether you knew how the railroad would convey the easement. The deed that has just been put in evidence, is that the method of conveyance which you had in mind, how the elevated railroad could convey these easements? A. (No answer.)

By the Court:

Q. It is the only conveyance which you had in mind, isn't it? A. Yes, sir.

2790 *By Mr. Nichols:*

Q. In estimating the value of the easements at the present time, that is December 7, 1923, did you make a careful study of all the payments made by the elevated railroad for the easements in 42nd Street? A. I did.

Q. And did you consider the course of values of the property to which these easements were formerly appurtenant as compared with the existing and present values? A. Yes.

Q. And conditions? A. Yes.

Q. And did you do that in respect to acquiring easements in question, that is, consider the value

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of the easement at the time that it was purchased by the company and the time it was sold? A. Yes.

Q. In considering the value of the subway easement, say, under the Pershing Square Building and the Commodore Building, did you have before you at the time you estimated their values, although not at the time that you were cross examined, a chart prepared some months ago for your consideration? A. Yes.

Mr. Nichols: That is a diagram showing the plottage of the property as of December 7, 1923, and I offer it in evidence.

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Mr. LaMotte: Objected to as not proper redirect examination. This witness has been called to testify to the value of certain real estate and on a certain day and this attorney had the right on redirect examination to inquire into anything that I brought out on the cross. I did not go into the question of what the railroad paid these owners back in 1888.

The Court: This is simply a map of the property and if you allow it in it would be of help to all of us, no doubt. It simply shows the arrangement of the property and there are no figures on it.

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Mr. LaMotte: I thought it was the other map, and I have no objection to this one.

(Map received in evidence and marked Claimants' Exhibit U.)

Q. Does that show the square foot area of the easement, Mr. Huntley (referring to Claimants' Exhibit U)? A. It does.

Q. Pershing Square? A. Yes, and the Bowery Savings Bank plot and the Commodore Hotel plot.

Q. You were asked on cross examination the particulars as to your appraisal of the value of the

2794 subway easement under the Commodore. Did you have in mind the actual sum for which the owners of that property sold those easements to the City, "the purchase price of the"—

Mr. LaMotte: This is an attempt on the part of Mr. Nichols to get in evidence the purchase price of the easements under which and about which the witness was not interrogated on cross examination.

Mr. Nichols: He was asked how much he valued it and the inference sought to be drawn was that he placed an exhorbitant value on the easements.

2795 The Court: You questioned him in regard to these easements and the extent of the easements; objection overruled.

Mr. LaMotte: Exception.

A. Yes, I had that in mind.

Q. How much did the City pay for the subway easement under the Hotel Commodore?

Mr. LaMotte: Objected to.

Mr. Nichols: You asked how much he valued them at.

Mr. LaMotte: I did not ask about the sale price.

Mr. Nichols: He was asked about the price.

2796 Mr. LaMotte: But not the price that they were sold at—you were asking about a sale and I do not know anything about it, and you have no right to bring out a sale that I did not bring out on cross examination.

Mr. Nichols: But the witness knows what it was sold for and I will bring this out. This is with reference to a matter which was brought out on cross examination.

Q. You were asked as to the percentage of the value of the land which you attributed to this easement, and you said 25 per cent.? A. Yes.

Q. Had you in mind the percentages of the value

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of the land which the City paid for easements expressed in the conveyance as the percentage of the land—similar easements?

Mr. LaMotte: Objected to.

The Court: Overruled.

Mr. LaMotte: Exception.

A. Yes.

Q. In the case of the subway easement under the Astor House at Vesey Street, was the consideration paid by the City for that easement expressed in a percentage of the value of the land, the whole plot?

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Mr. LaMotte: I object to that, I did not ask him anything about the Astor lease.

Overruled. Exception by Mr. LaMotte.

A. Yes.

Q. You had that in mind? A. Yes.

Q. You knew the easement there? A. Yes.

Q. How much was the percentage?

Mr. LaMotte: Objected to.

Sustained. Exception by Mr. Nichols.

Q. The subway extends under the Hotel Commodore and the Pershing Square Building and the Bowery Bank Building and under the Belmont Hotel, doesn't it? A. Yes.

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Q. Are you familiar with the amount of the space occupied by the easement under the Belmont Hotel? A. Yes.

Q. And with the purchase by the City of the easement in 1902 for the first subway and the value of that property as determined by a sale made at the same time just before the easement was purchased by the City? A. Yes.

Q. Did you determine the percentage between the value of the land and the amount paid by the City for the subway easement there? A. Yes.

Q. Did you also compute the cost to the City of the easement under the Pershing Square property, did you compute how much that cost the City, how much money? A. I did.

The Court: He testified that he had that in mind.

Q. You were asked your opinion as to the difference between the value of the abutting properties and without an elevated railroad and whether that was the same as the value with and without the easement, and you said yes, as I understood
2801 it. Did you take into full consideration the effect of the taking down of the elevated railroad and the amount of noise, vibration and privacy? A. Yes.

By the Court:

Q. In case of an increase which you have given here with and without the structure, that is based solely upon the benefit which results from the restoration of the easements of light, air and access? A. Yes.

Q. There might be an additional benefit, in your
2802 judgment, also by the elimination of the noise, etc.? A. A restoration of privacy, but I have given that no value. I have not considered that as of any value in giving my calculations.

By Mr. Nichols:

Q. Let me ask you whether you considered, in view of the conditions in the street which you had in mind, whether there would be any greater or less noise and say more or less vibration on the elevated railroad at the street, with or without the conditions there? A. I do not think that there would be any lessened noise.

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By the Court:

Q. Would there be a lessening in view of the right of privacy? A. Yes.

By Mr. Nichols:

Q. Would that be a matter influencing the values in view of the condition of the street as a busjness street? A. I do hot think it would be a matter of consideration in valuing, because a business does not require the privacy that a dwelling or hotel does.

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Q. You were asked as to whether the removal of the elevated railroad from 42nd Street affected the entire properties, Pershing Square Building, the Bowery Bank and the property at the northeast corner of Lexington Avenue and 42nd Street, where is the principal entrance to the Pershing Square Building first? A. There is one on 42nd Street and one on Park Avenue from my own observation. I used,—they are used about equally.

By the Court:

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Q. There would be no more use of the entrance on 42nd than 41st Street? A. Yes, I am speaking about Park Avenue, about in the center of the block between 41st and 42nd Streets, there is an entrance on 42nd Street, and 41st Street entrance is not used much.

By Mr. Nichols:

Q. What, in relation to the building of the character of the Pershing Square Building is the effect of having a structure in front of the building, a solid structure, as it was there in that part of 42nd

2806 Street, as to the character or class of the building and its availability for the highest class of tenants? A. If the means of access is deteriorated through some loss of easy access, I think it would have a tendency to depreciate the general character of it, and it would make it a little less—the tenants in the building, it would make it a little less desirable to the very highest class of people.

Q. What is the character of the Pershing Square Building as it stands now without the elevated railroad? A. I think it is a higher class than it
2807 was with the elevated structure there. I think you will get a better class of tenants than while it was there.

Q. Take the upper floors about the third floor, would the fact that the class of the building was improved by the removal of the physical deterioration to it, in front of one of the principal entrances, how would that reflect, in your opinion, on the prospective rental value of the upper floors? A. It would probably take all of those floors—it would give you maybe ten cents a square foot better rental over all the office space.

2808 Q. In those upper floors how much is the rental per square foot?

Mr. LaMotte: I did not go into that; objected to.

The Court: Allowed.

Mr. LaMotte: Exception.

The Court: There can be no question in my mind but what that building, as a whole has been improved since the removal of the structure.

Mr. Nichols: There cannot be any question about it, but I want to get some of these things

2809

with which we are so familiar here in New York in the record; take, for instance, I am in the building on Broadway, 165—

The Court: Proceed.

A. I have been informed that the average rental of all the office space is about $2.49 a square foot and that this will probably raise it to about $2.59.

Q. And the Bowery Bank Building, where is the principal entrance to that? A. On 42nd Street.

Q. Take the building at the northeast corner of 42nd Street and Lexington Avenue prior to the taking down of the elevated railroad, was access 2810 to that building from the direction of Park Avenue and Fifth Avenue impeded by the structure? A. Yes.

Q. Was it obscured by the structure? A. Not particularly except in a general way, the entrance being in the middle of Lexington Avenue it would be obscured from certain directions by the elevated structure, and in one case it would be obscured by the erection of the Commodore Hotel. It is in the middle of the block on Lexington Avenue, the entrance to that building.

Q. The building itself, as a whole, would that be 2811 obscured by this structure which was in 42nd Street, between that point and Park Avenue? A. Certainly.

Q. And the whole building, would that be affected by the addition of the obstruction and the obscuration existing before the elevated railroad was taken down? A. Certainly.

Q. Would you attribute an effect upon the entire rental quality of that building similar to the Pershing Square Building? A. I think it would

2812 be about the same, in about the manner the entire rental possibly, of it.

Q. Of the Manhattan Storage Company case, fronting on 41st Street as well as 42nd Street, the increase in value which you attribute to the restoration of the beneficial enjoyment of the easement was limited to the land in your testimony, was it not? A. It is like in every other case it is spread over the entire property. It is there as a unit and it is largely, if not entirely, in the increase to the land. And this is used for the spe-

2813 cial purposes of a storage warehouse.

Q. You were asked as to the sale on January 2nd, 1921, by the City of the Pershing Square site which had to be condemned some six and a half years before that time, in 1914. What was the consideration that the City obtained? A. $2,900,000.

Q. What did the City pay as of 1914, the date of taking title as determined by the condemnation proceedings?

Mr. LaMotte: Objected to as I did not ask him about that sale.

2814 Mr. Nichols: You asked him about the course of values at that time in connection with that.

The Court: I do not think that you are entitled under the special rule applicable to these cases to go into that unless Mr. LaMotte does.

Mr. Nichols: Owing to the difficulty in proving these cases—

The Court: As soon as his experts go on you may possibly get this out on cross examination, but you are entitled to prove every element that enters into your damage. I do not think that the Court ought to adhere to the strict rules of evi-

dence. This is an unusual and peculiar proceeding, and I will allow the question. 2815

Mr. LaMotte: I object to it as irrelevant, incompetent and immaterial and I object to it upon the further ground that it is not proper redirect examination, not having been brought out by the cross.

Overruled. Exception by Mr. LaMotte.

A. The entire plot covered by the Pershing Square Building and the Bowery Savings Bank Building, total amount awarded was roughly, $3,600,000. 2816

Q. That was in 1914? A. Yes.

Q. About June or July, 1914? A. Something like that in 1914.

Q. And the City held that with various attempts to sell it, until 1921, the same building that it sold for $2,900,000, for these six or seven years, is that right? A. I think that sale was made in 1920, wasn't it?

Q. The date of the transfer was January 2nd, 1921? A. Yes, that is right.

Q. Losing interest and taxes upon the amount of the award and the value of the property during that time? A. Yes. 2817

Q. And then sold it for about $700,000 less than it cost them before? A. Yes.

Q. Are there any circumstances changing the physical condition and surroundings of that property to account for this great loss in value to the City during that period? A. First, the City constructed an easement for a subway underneath the property and afterwards the City constructed a viaduct in Park Avenue, both of which would militate against the value of the property as compared with the property where there was no easement.

2818 Q. You are familiar with what the City paid for the easements of light, air and access taken by the viaduct in front of the Pershing Square Building? A. Yes, not in front of it.

Q. I say, from the Pershing Square Building? A. From that viaduct.

Q. So that there was the Park Avenue viaduct on one side and the subway easement under the elevated railroad easement on 42nd Street? A. Yes.

Q. You were asked as to the sale in 1921 and
2819 immediately following the sale by the City of the entire Pershing Square plot, of the plot now occupied by the Bowery Savings Bank for $1,400,000? A. Yes.

Q. How much of that figure was the unit lot at that time? A. The part figured out something like $214,000, something like that.

Q. And the same Bowery Bank there recently since the elevated railroad was taken down—has the Bowery Savings Bank purchased the plot adjoining on the east side from the Third Avenue Railway for 50 feet frontage, halfway through the block, has the Bowery Bank purchased that re-
2820 cently?

Mr. LaMotte: I object to that, going into that question at the present time.

Q. I now ask you whether the Third Avenue Railroad Company has sold that property right adjoining the bank building? A. Yes.

Q. For how much?

Mr. LaMotte: Objected to on the ground that it is improper redirect examination, after title vested a long time.

Mr. Nichols: He brought out this sale.

Mr. LaMotte: I did not bring out this particular sale.

2821

Mr. Nichols: He brought out actual sales and I want to show all the sales.

Mr. LaMotte: You should show them the right way.

The Court: You cannot go into sales that he did not go into. You may possibly bring it out by the other witness. Objection sustained.

Exception.

Q. Take the sale that you were asked about on the south side of 42nd Street between Lexington Avenue and Third Avenue, No. 156 and 158. You were asked about the sale in March, 1920, for $130,-

2822

000. Was that a sale just three years after that of the same property also in March, 1923, for $150,-000?

Mr. LaMotte: That is not fair, your Honor.

Q. What was it sold for three years after?

Mr. LaMotte: I object to the question upon the ground that unless I brought this sale out it is not competent. I did not go into it and I do not know anything about it. I was criticized in the trial of a case a little while ago for incorporating in my question the consideration expressed in a convey-ance like that.

2823

The Court: Objection sustained.

Mr. Nichols: Exception.

Q. Did you know of the sale subsequent to that sale which was brought out on cross examination of the same property? A. What property are you referring to, 158—156 and 158 East 42nd Street?

Q. Yes. A. I have stated that was sold and re-sold twice on the record now. 158 and 156 sold in 1920 by Joseph P. Day, and sold again in 1923 to the Mandel-Ehrich, and that is in the record and the consideration of each of the sales, the first sale $130,000, and the next one $155,000.

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Q. How much was the building worth both times? A. $30,000.

Q. Increase of how much in percentage? A. About 33 1/3 per cent.

Q. In three years? A. Yes.

Q. 11 per cent., about, per year. At the time that the City sold the Pershing Square site, did it offer the property at auction with the statement in a pamphlet as to the nature of the property and on the statement did it make any statement relative to the removal of the elevated railroad? A. Yes,

2825 sir.

Q. What was the statement? A. That the elevated railroad structure was to be removed.

Q. In your opinion was the fact of the removal of the elevated railroad reflected in a discounting of the benefit expected from that act? A. Certainly.

Q. When, in your opinion, did the discounting begin as a practical matter? A. I suppose somewhere around 1919.

Q. Did it continue progressively as the various legislative and other steps were taken? A. It con-

2826 tinued, but I do not know whether it progressed rapidly, but it continued probably with progression, yes.

Q. You were asked how far you looked into the future when you estimated the value of the property without the elevated railroad. Did you confine yourself to the fact strictly to its value as of December 7, 1923? A. That is what I tried to do. To keep my figures right on the question just before it happened and just after it happened in 1923.

Q. Are you familiar with the sales and the course of values that had taken place subsequent to that

2827

event and in the light of the actual removal of the structure?

Mr. LaMotte: Objected to as incompetent, irrelevant and immaterial and as not proper redirect. He said he gave these figures immediately after the vesting of title. He said he did not go into the future and now he wants to bring him into the future.

The Court: Objection overruled.

Mr. LaMotte: Exception.

A. I am.

2828

Recross examination by Mr. LaMotte:

Q. This sale that you were asked about on the southeast corner of Third Avenue and 42nd Street, you spoke first of two sales? A. Southwest corner of 42nd and 43rd—southwest corner of 42nd Street and Third Avenue.

Q. Is that property sold twice—was it sold twice? A. No, only once. The sale I spoke about was 156 and 158.

Q. Isn't that on the south side? A. Yes, I thought you said the corner.

Q. South side of 42nd Street? A. Yes.

2829

Q. That first sale was 1919, wasn't it? A. We have it in 1920.

Q. December 31, 1919, deed passed January 2nd, 1920? A. Yes.

Q. That was from the Interborough Rapid Transit Company to the Rapid Transit Subway Construction Company? A. What?

Q. Any difference between those two companies? A. The sale I have in mind was the Interborough Company to Bernheim Realty and Felix Isham, he bought it in and it went to the Bernheim Realty

2830 Company, and that was the first sale I had reference to, $130,000.

Q. What is the second sale that you had reference to? A. From the Bernheim Realty to the Mandel-Ehrich Corporation, the Mandel-Ehrich Corporation being the same people who bought and sold the Pershing Square site.

Q. When did they buy? A. 1923.

Q. That is the sale you have been asked about that took place before you fixed your valuation as of December 7, 1923? A. Yes.

2831 Q. When the City sold the Pershing Square Building property to the present owners, were there not foundations built upon that property at that time? A. Surely.

Q. Do you know what the cost of those foundations was? A. No.

By the Court:

Q. They were substantial foundations? A. Yes, they sold probably with the foundations fit to carry a twenty-five story building, as I remember it, able to carry a twenty-five story building.

2832 Q. They were sufficient to carry the present building? A. Yes.

Q. And it is used by the present building? A. Yes, along the line of the subway.

By Mr. LaMotte:

Q. I now ask you whether the value of those foundations was included in that sale price? A. Yes.

Q. That is, they went to the purchasers? A. With the sale.

Q. The City put that in there? A. Yes.

By Mr. Nichols:

Q. In reaching your conclusion as to the value of the easement to which you have testified, have you had before you and consulted a compilation of the values, etc., assessed by the City on all lands fronting on 42nd Street spur and its immediate vicinity, and front foot values as compiled by the Department of Taxes and Assessments through the entire neighborhood? A. Yes.

Mr. Nichols. I offer this compilation in evidence subject to any correction that the Corporation Counsel may find. It has been prepared with the greatest care and I think it would be of great advantage to the Court. 2834

The Court: It may be marked for identification only.

(Paper marked Claimants' Exhibit V for Identification.)

Mr. Nichols: The valuations in the compilation referred to begin as far as the specific plots are concerned with the year 1913, and are carried up to the valuations for the year 1925. Attached to each are sheets, there is a plottage as it was in 1913 and at the present time also so that the plots can be identified with ease and certainty. The values appear as per front foot beginning at the year 1909. Your Honor thinks that it is inadvisable to take the rentals for the indirect proof of values at the present time? 2835

Mr. LaMotte: I do not want to go on with my case and put men in and let the other side put some other witness on. There ought to be some order of proof here. I am going to call Mr. Brady and I am willing to rest on his testimony if Mr. Nichols

2836 agrees to rest there. If I do not put any testimony in at all as to the benefit you have this testimony in, but at the present time I will agree to close my case so far as this character of testimony is concerned, and I am willing to put on but one, but I do not want to start in now and then when I get through with that one to have the other side get the ammunition and then come back with witnesses and go at me again.

Mr. Nichols: This case is a peculiar one in the respect that the City has been told who our ex-

2837 pert was.

The Court: This suggestion of calling one witness came from the Court. It is my desire and hope that it can be done, that one witness on either side will be sufficient, but I do not like to require either side to state positively at this time whether they should call but one witness, but I think that is all that would be required, in my judgment.

Mr. LaMotte: I am willing to agree to it, that is the fairest thing I can do, to call but one witness if the other side will agree to that and end it there as far as this class of testimony is concerned. If

2838 Mr. Nichols wants to do it then I will do it.

Mr. Nichols: The Manhattan Railway is really the more important of the two claimants and the burden of proof rests upon our shoulders. If there were no evidence in this case there could be no recovery, I presume, and the question as to the sufficiency of the testimony is one which affects us of course very much more directly than it does the City because it is up to us to put the proof in. I am perfectly willing to let the matter rest upon the lesser testimony if the City's expert's testimony is such as to reasonably warrant me doing so, but I do not know what the City's expert will testify

to, and so my understanding of the situation, as a practical matter was, was that the City's expert should go on without our going into the indirect method of proof, and that then we could get some light on the City's end of the case, as to whether it was necessary for our protection to go into the indirect method of proof. The City might come in here and very unexpectedly testify to some figures as to the values due to the taking down of the structure that would seem to me to be so very slightly differing from ours that I would not want to raise any question, but I might want to bring in 2840 the indirect method.

The Court: I must decide what the value is and there is only one element by which to decide it upon this theory, and that is the value of the abutting property with and without this structure, this structure, I mean; in other words, I must determine what the value of the easement is. My own judgment is that the benefit is a very substantial one. I do not see how the City can take any other view of it. There must be a big advantage to even abutting property owners.

Mr. LaMotte: The City may not put in any evi- 2841 dence as to the question of benefit.

Mr. Nichols: Mr. Roberts, who represents the Manhattan Railroad has expressed the feeling that it would be unwise for us to omit that so-called indirect mode of proof which is the usual method of proving values of an easement.

The Court: What other witnesses would you want to call to corroborate Mr. Huntley?

Mr. Nichols: I would ask Mr. Huntley to testify as to the indirect mode of proof as to the rentals and I am frank to say that I have been relying upon Mr. Pease of Pease & Elliman, who is very

well acquainted with the rental value, and to give some proof as to the practical effect upon rental values, and that is the way the value was determined with respect to the Park Avenue viaduct referred to a while ago.

The Court: I think when the evidence is in it will be sufficient to sustain a finding for the Court as to the value of this abutting property with and without this structure. I do not think that their finding will be disturbed by any higher Court, because you both admit a benefit.

2843 Mr. LaMotte: Of course I do, but it has nothing to do with the case.

The Court: For that reason why go into so much of this testimony?

Mr. LaMotte: I am willing to rest on one witness and it is now up to Mr. Nichols. I cannot do any more than that.

Mr. Nichols: I think in view of the expression of opinion on the part of the Court that in view of the character of the case and the single expert, that I would feel like yielding to your expression of opinion because I always recognize that it is in the discretion of the Court as to how many witnesses should be called. I am rather surprised, to tell the truth, because in a case right here on 42nd Street involving some of these same properties, there have been so many experts called on behalf of the City and I would feel that I had hardly met the requirements of my duty if I were not prepared —have three witnesses—I was with them yesterday, all day yesterday, going over this rental situation, and with Mr. Pease, because I wanted to be fully prepared on every aspect of the case, but Mr. Huntley can put in evidence as to these values in a single sheet.

2844

The Court: If Mr. LaMotte would put in evidence that there was no benefit to the abutting property then I would want to have put in additional evidence. Then the City must necessarily admit that there has been a substantial resulting benefit to the abutting property by reason of the taking down of this structure. I understand his contention is that it has nothing to do with the case, of course, and that you do not own the easement; but I do not see how that will affect the question of value.

Mr. Nichols: I only want a proper record to 2846
support my view.

The Court: I think we had better go ahead and let the City call their witness.

Mr. LaMotte: Then as I understand it with that witness, if I call one witness, it ends this line of proof?

The Court: Yes.

(Recess until 2 o'clock P. M.)

AFTERNOON SESSION.

Mr. La Motte: I move to strike out the testi- 2847
mony of Mr. Huntley as to the total value he has testified to, that is, $3,600,000, and as to his values of the property on 42nd Street just before the vesting of title, and the values on the same property just after the vesting of title, and as to all his testimony which relates to the vesting of title and the values, upon the ground that he has adopted an erroneous theory of valuation in that he has attempted to value the property of the railroad taken in this proceeding upon the basis of a benefit that will result to the abutting property by reason of the acquisition of the franchise and the balance of the railroad.

2848 *City's Witness—Henry Brady—Direct.*

The Court: Denied.

Mr. La Motte: Exception. It is understood that they have rested?

The Court: I understand so.

HENRY BRADY, called as a witness on behalf of the City, having been duly sworn, testified as follows:

Direct examination by Mr. La Motte:

Q. Your full name? A. Henry Brady; address, 139 West 33rd Street, Manhattan.

2849 Q. What is your business? A. Real estate broker, agent and auctioneer.

Q. How long have you been in that business? A. About twenty-six years, nineteen for myself and about seven years for Joseph P. Day.

Q. Where have you been located, your business location in the City during that time? A. For about fifteen years I was at the corner of 23rd Street and Seventh Avenue, and the last five years on 33rd Street between Broadway and Seventh Avenue.

Q. This is in the Borough of Manhattan? A.

2850 Yes.

Q. During the years you have been in the real estate business have you bought and sold real estate in the Borough of Manhattan? A. Yes, sir.

Q. Improved property and vacant property? A. Yes, sir.

Q. Have you appraised real estate? A. A great deal of it.

Q. Appraised it for the purposes of mortgages? A. Yes.

Q. For various institutions and condemnation proceedings? A. Yes, and I have testified in condemnation proceedings.

2851

Q. Have you also engaged in the renting and leasing of real estate? A. Yes, I manage about 110 buildings throughout the City.

Q. Do you keep a record of all real estate transactions in the Borough of Manhattan? A. I do.

Q. And are you familiar with the prices at which property has been bought and sold all over the Borough? A. Well, I try to familiarize myself with the consideration paid for property that has been sold.

Q. But you keep a regular system in your office, do you? A. I do.

2852

Q. And you have been doing so for a number of years? A. Yes, sir.

Q. Please state your general experience in the real estate line, your experience generally? A. Well, I have appraised for the City of New York and the State Comptroller of the State of New York, the United States Government, the New York Central Railroad, Lincoln Trust Company, the National City Bank, the Bankers Trust Company, Title Guarantee & Trust Company, Guaranty Trust Company, Manufacturers Trust, Hudson Trust, Saks & Company, Farmers' Loan & Trust Company, Excelsior Savings Bank, Banking Department of the State of New York, I have been their appraiser since 1914; Insurance Department of the State of New York, New York State Tax Commission, Bloomingdale Brothers, District Attorney Whitman, District Attorney Swan, Transit Commission, Attorney General of the State of New York, Empire Trust, Kings County Trust, American Trust, Bank of New York & Trust Company, Westside Savings Bank, Bank of Washington Heights, United States Mortgage & Trust Company and I appraised the estate of William Rockefeller

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2854 and William G. Rockefeller, John Jacob Astor, B. Altman, Angelo Duke, Peter Doelger, Charles Thorley, Isaac Guggenheim, Michael Dresser, Isidor Straus, Percy G. Williams, Louis Stern, Park Benjamin, Dr. Jacobi, Addison G. Hannan, Charles F. Murphy, Charles Ransom Miller of the New York Times, Mary Curringham, Hon. Henry H. Hotchkiss, John H. Flagler, Jacob Hoffman, Rudolph Schaefer, and some of the large law firms, and I have appraised in the immediate vicinity of—

2855 Q. What have you valued or appraised in the immediate vicinity? A. 689 and 691 Fifth Avenue and also 624 Fifth Avenue for Marco, the photographer, and the southwest corner of 45th Street and Fifth Avenue for Larkin, Rathbone & Perry, and No. 1 West 51st Street for Cullen Dyke, and 516 Park Avenue for A. Booth, and 145 and also 131 East 43rd Street for R. & D. J. Gorham, and 17 Park Avenue for the Bankers Trust Company, and I sold as broker the property on the southeasterly corner of Park Avenue and 42nd Street.

Q. Is that the Pershing Square property? A. That is known as the Pershing Square property.

2856 Q. Which sale did you make? A. I made the original sale from the City of New York to Henry Mandel.

Q. Have you appraised any property immediately abutting this spur? A. Appraised the Commodore Hotel and the Biltmore Hotel.

Q. And sold the Pershing Square Building? A. The land on which it is erected.

Q. Had you anything to do with the valuations of the easements? A. In what way?

Q. Under the Pershing Square Building? A. Well, only this property was sold subject to easements.

2857

Q. How long have you known that section? A. Oh, I guess for the last twenty-eight years.

Q. You were born in New York? A. Born on 23rd Street.

Q. Living in New York all your life? A. Yes.

Q. Are you familiar with the spur, have you made an examination of it? A. I cannot say that I examined it closely enough to testify about the physical appearance of the spur.

Q. But you know what was there? A. I know what was there, yes.

2858

Q. You know that it had a station at Park Avenue and 42nd Street, and this spur ran over to Third Avenue? A. Yes.

Q. I want to ask you this question: Assuming that the Manhattan Railway Company owned easements in the property abutting on 42nd Street, which enabled it to maintain an elevated railroad structure in 42nd Street, and operate cars and trains thereover free of damages and right to damages, and free of interference and right of interference on the part of the owners of property abutting on 42nd Street, and also assuming that the easements owned by the Manhattan Railway Company constitute in law an estate in the property abutting on 42nd Street which the Company can sell and convey only to the owners of the property abutting on 42nd Street, but that the only way in which the abutting owners can be put into possession of such easements in case of a sale and conveyance is by the demolition of the elevated railroad structure in 42nd Street, and the surrender of its franchise from the State and City in 42nd Street. What, in your opinion, was the fair market value of these easements on December 7, 1923, just before title vested? A. No value.

2859

2860 Q. In estimating the value of those easements, did you or did you not take into consideration the benefit that results to the abutting property by this proceeding? A. I did not.

Cross examination by Mr. Nichols:

Q. Are you familiar with the legislation authorizing the removal of the spur in 42nd Street? A. I did not know that it had been authorized to be removed except by condemnation, if you mean that.

2861 Q. Are you familiar with the terms of the Act of 1917? A. Well, just superficially, my recollection of that and my knowledge of that is that it gave you the right, it gave the railroad the right to remove, but the right to reconstruct also.

Q. That was upon such terms and conditions as may be agreed upon by the Manhattan Railway Company and the Transit Commission and the property owners?

Mr. La Motte: Objected to upon the ground that the Act did not give any authority to agree with the property owners.

The Court: Allowed.

2862 Mr. La Motte: Exception.

A. I do not know upon what terms.

Q. Have you no knowledge whatever or have you acquired none in the preparation of this case as to the negotiations which took place with the property owners and the Manhattan Railway Company and the City, relative to a voluntary removal of this structure under the Act of 1917?

Mr. La Motte: Objected to as the property owners could not be a party to that Act.

Overruled.

Mr. La Motte: Exception.

2863

A. I have no such knowledge.

Q. Did you in the course of your preparation to determine the value of an easement of light, air and access possessed by the Manhattan Railway and condemned by the City under the authorization of this Act require any knowledge as to the sale by the Manhattan Company of similar easements to property owners? A. No, sir.

Q. Did you not know that the sale by the Manhattan Company of easements of light, air and access taken by erection of the spur in Morris Street was recorded as a conveyance of real estate by the Cunard Company, and a matter within your cognizance as a real estate expert? A. I did not.

2864

Q. Did you not know that there followed condemnation proceedings by the City of the property with which the spur connected and that in that proceeding there were easements, the value of the easements determined by the City? A. I did not know that in the condemnation proceedings the value of the easements was determined, but I did know that subsequent to the condemnation the Cunard Line had acquired some rights from the railroad company.

2865

Q. Did it interest you to determine the value of the easements as measured by the consideration recorded? A. It did not.

Q. Knowing the fact that the easements sold by the Manhattan Railway Company to the Cunard Company as the result of the condemnation proceedings by the City, rendering the operation of that spur comparatively useless for any purpose, did you take the trouble to inquire as to the circumstances and value of that easement? A. No, sir, I know that it just affected the Cunard Building and it would not interest me in determining

2866 the value of any easement in any other part of the City or to any other owner,

Q. Would it interest you to know that as a matter of record as the result of the judicial determination of the value of that easement, that it had been determined at the time of this acquisition at a sum approximately one-tenth of the value of the sum which the railroad obtained for it from the abutting owners? A. No, sir.

Q. Have you dismissed entirely from your mind in preparing this case the possibility of the property acquired by the elevated railroad might and must increase in value in proportion to that of the abutting property by which it is measured? A. I have not.

2867

Q. Have you made a study in respect of the value of the easements? A. Yes.

Q. Do you know what the City paid for the subway easements under that property in Morris Street? A. No, sir, they acquired the fee, as I understand it.

Q. Fee of what? A. Of the property.

Q. Do you mean to say that they acquired the Maier's property? A. I understand so, or they intended to because I had appraised it for the Transit Construction Commission for the purpose of acquiring it, that is the Public Service Commission, I think they call it, of which Judge McCall was Chairman.

2868

Q. Don't you know that they awarded the Maier's people for the easement on the Broadway side, $506,000? A. I do not know what the award was.

Q. Do you know that that award to the Interborough Company for their easement on the Morris Street site was $150,000? A. I do not.

2869

Q. Do you know about the acquisition by the City of the easement for the subway under the Astor House at Vesey Street, for instance? A. Do I know that they acquired it?

Q. Yes. A. Yes, they have.

Q. Do you know that the terms of the acquisition at the first was 25 per cent. of the appraised value of the real estate at the corner of Broadway and Vesey Street? A. No.

Q. Did you know that no part of that easement came within less than 16 feet of the street surface? A. I do not know anything about the extent of the easement.

2870

Q. Do you know that the City paid in 1902 $140,000 for 3,335 square feet of subway easements under the corner of the Belmont Hotel? A. I do not.

Q. And that is just opposite the Pershing Square property that is involved in this proceeding? A. It is.

Q. Do you know that that easement in the Belmont Hotel occupies less than three per cent. of the plot, 105 feet on 42nd Street and 104 feet on Park Avenue as it existed then? A. I do not.

Q. Do you know that the building was sold to Mr. Belmont a few months preceding his sale of the easements to the City for $650,000? A. No.

2871

Q. You did sell for the City the Pershing Square site? A. Yes.

Q. 230 feet upon 42nd Street running through the depth of the block to an equal frontage on 41st Street? A. Yes.

Q. And having a frontage of 197 feet and 6 inches upon Park Avenue? A. Correct.

Q. In making that sale you are familiar with the advertisement which the City published giving the

2872 terms of the sale that the elevated railroad was to come down? A. Yes, I wrote it and published it.

Q. You had something in your mind as to the value of the easement when you published the statement to the public in offering that property for sale, that the elevated railroad was to come down? A. Easements had never entered my mind excepting the underground easements.

Q. But they did come to your mind, and will you compute, if you can, how much the underground easement cost the City there at the Pershing Square

2873 Building. They paid $3,500,000 for that property, did they not, in condemnation proceedings? A. They paid that for the hotel and an additional sum which included some sum for a leasehold which was heretofore made.

Q. But we will confine ourselves to $3,500,000 as the lesser sum. A. The leasehold interest was included in that lesser sum.

Q. The two parts making the whole and there was paid $3,500,000 for that property? A. Yes.

Q. You say that there was a hotel on there, do you recall what the City expert testified was the

2874 value of that hotel? A. No, I do not know anything—I do not know what they did there with respect to that.

Q. But you did know about the value of the subway easement and you did sell that same property? A. Yes.

Q. For the City? A. Yes.

Q. And you do not know about the condemnation proceedings? A. That was ancient history. Things had changed.

Q. One thing that changed, they put a viaduct on Park Avenue? A. That had been there when I sold the property.

Q. Yes, that was opened in the early part of 1919, don't you know? A. I do not know.

Q. I thought that was one of the things that affected the property? A. No, sir.

Q. The viaduct? A. No.

Q. That is shown in your advertisement, is it not? A. Yes.

Q. Take the interest running, say for six years or more than six years, after the City acquired it until the time when it sold it, and take the interest which the City lost in that time, can you figure that on three and a half million for six 2876
years at five per cent. That was at a period when five per cent. would be a fair interest, wouldn't it? A. Not in real estate.

Q. What would be a fair interest? A. Six.

Q. Make it six. A. At five it would be $750,000 without compounding.

Q. I do not want it compounded, $3,500,000 at six per cent., you prefer it at six per cent., that is 36 per cent. not compounded, for the six years, and multiply the $3,500,000 by the 36, and you get $1,260,000, isn't that it? A. Yes, sir.

Q. During that period the City lost taxes, didn't 2877
it? A. Well, they lost it, but this is the property that was not assessed, they did not have to pay taxes to themselves.

Q. No, but they would have received taxes if they had not acquired the property, so that they lost taxes. Can you estimate what the loss of taxes would be in those six years? A. If you will give me the assessed valuation.

Q. I can give you the assessed valuation. The assessed valuation in 1915 was $2,375,000. A. What was the tax rate then?

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Q. About 1¼. A. It was more than that, it was more than 2 per cent. It must have been 2 or 2.40.

Q. I want a minimum. A. Assuming that it was 2 per cent. and did that tax rate remain permanent?

Q. Yes, just to get a rough calculation.

The Court: Do I understand that the City acquired this property by purchase rather than condemnation?

Mr. Nichols: The City condemned it and built that subway and they condemned the whole thing

2879 in order to run the railroad under it.

A. About $342,000.

Q. That is for the entire period? A. That is for the six years.

Q. Of course there was some expense in commission for selling it, and so forth? A. The City has not any authority to pay commissions for selling.

Q. You sold it for the City of New York? A. I did not say that.

By the Court:

2880 Q. You got your commission from the purchaser? A. Yes.

By Mr. Nichols:

Q. We will restrict ourselves to the actual loss of interest and taxes and that total according to your figures is $5,102,000, and then the City put in some foundations, didn't they? A. Yes, sir.

Q. And besides that they excavated it so that it was more desirable for the construction of a building? A. If whoever bought it could use what was put in there and they were satisfied with the excavation it would make it more desirable.

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Q. Mr. LaMotte brought out on cross examination and do you agree with these facts, that that was a suitable foundation for the erection of a building that was actually put upon it? A. After some legal entanglements were straightened out the Zone Law started to conflict with the use of that property.

Q. And it was the City who imposed the Zone Law? A. Yes.

Q. How much were the foundation and the excavations that appear here in this pamphlet which you got up,—how much were they worth, how much did they add to the value of that property? A. I do not know.

2882

Q. Cannot you make a guess. Weren't you on the auction stand to say how valuable your property was owing to the desirability of the foundations? A. Do you mean valuable to a man who wanted to put a three-story building there, or one that was valuable to a man who wanted to put up twenty-five stories?

By the Court:

2883

Q. Why did the City put down foundations—so as to avoid later operations over the subway? A. Yes.

By Mr. Nichols:

Q. Are not you aware that Mr. Travis Whitney in speaking on the same subject said that the City had put down foundations suitable to a large office building, for the purpose of enhancing the value of the property and the sale which you actually made? A. Well, Travis Whitney had nothing to do with the property at the time I sold it.

Q. So that you cannot put any estimate upon

2884 that value of the property which you sold? A. I can give a good guess.

Q. Your guess will be very good,—let us have it? A. Possibly $2,000,000.

Q. So that that makes a total of $5,302,000 that that stood the City in, and they sold it for $2,900,000. Can you explain that apparent loss of $2,402,000? A. It is not a loss.

Q. The City— A. It is a loss the way that you build up your case, but it is not an actual loss.

Q. The City, for whom you have acted in many
2885 capacities, and were acting at that time, that conducted that condemnation, that held that property and did sell it for the sole purpose of acquiring the subway, isn't that true? A. Correct.

Q. Assuming reasonable prudence on the part of the City, would you not consider as any business man would, the cost of those easements as they stood around the books in the way that I have brought out here, the actual cost to the City and what the City acquired, and then the City would have what the easements cost the City? A. No.

Q. You have no other explanation to make? A.
2886 I can answer that question.

Q. What explanation have you to make, then? A. In the first place, you are charging the interest to the City on $1,200,000, and you are trying to show that that reflects in the value of the easements, and then you are charging taxes, and trying to charge up as the value of the easements, and I cannot see any merit to that.

Q. You cannot see any merit to that? A. No, they were carrying the property and paying the charges and the taxes on the whole eighteen lots and not on the portion affected by the easements,

and likewise the interest charge, it should be spread over the whole plot.

Q. The easements affect the value of the entire property? A. No—oh, it does as the net result, but it only affects the value of the area covered by the easements.

Q. Don't you know that the City acquired a great many properties for the purpose of acquiring easements in certain streets, and elsewhere? A. Not a great many.

Q. One bunch of them, eighteen in number, that were offered for public sale through Joseph P. Day, 2888
do you know whether they were in fact sold at that auction? A. They were not.

Q. Do you not also know that the City was unable to obtain its upset price when it sold this Pershing Square property, or attempted to sell it? A. They could have gotten more. I had bid $100,000 more than the upset price if the City would accept $1,000,000 cash.

Q. That is the trouble. Don't you know the reason why these subway easements were not sold in the attempt that the City made to sell them, was because the mortgage companies, and the loan 2889
companies would not lend upon property encumbered and rendered unusual and peculiar in their character, burdened by the subway easement? A. No; the Bowery Savings Bank loaned the Manhattan money on the portion that the Manhattan reserved to itself, and there was no trouble about that.

Q. Don't you know that the City had to go to Albany and get special legislation after it had attempted to sell these easements, in order to change the law in regard to encumbrances upon real estate so as to permit the investment of trust funds

2890 to enable them to sell those properties? A. That was away back in 1910.

Q. Yes. A. But the Pershing Square was sold later and people were well educated up to what the easements meant at that time.

Q. Do you know as the result of the education that the City paid $902,000 for the easement under the Commodore Hotel? A. I do not know what they paid for it.

Q. You heard on cross examination here, didn't you, of Mr. Huntley that it was attempted to show
2891 that 25 per cent. was too much to apply to these easements under the Commodore? A. I would have to know how the easements affected the property before I could pass any opinion about what Mr. Huntley has said.

Q. But the matter has been brought to your attention as an element of importance in this case, that some of the most important, in fact the most important properties, to which these easements of light, air and access are now restored, are subject to another kind of easement, and you have not taken the trouble to find out what the City who
2892 employs you actually paid for these easements? A. Under the Commodore?

Q. Yes. A. Certainly not. Each easement affects a piece of property differently. What they pay for one has no bearing on what they pay for another.

Q. We will confine ourselves strictly to the Hotel Commodore easement. Do you know what the area of that is? A. I do.

Q. Is it 20,000 square feet? A. The area is 21,451 square feet, and an additional 5,237 square feet.

Q. You are speaking about the Hotel Commodore, now? A. Yes.

Q. Have you got that on your map? A. Yes.

Q. But you have not found out how much it cost? A. That is computed by the engineers of the Rapid Transit Commission.

Q. Do you know that Travis H. Whitney of the Commission wrote to the Interborough Rapid Transit Company, January 15, 1915, for the purpose of charging the cost of the subway against it as follows: "The purchase price of easement is $902,500"? A. I do not know what he wrote. 2894

Q. Have you anything which would lead you to dispute the fact that $902,500 is charged by the City as a matter of record for the payment of those easements? A. I cannot dispute anything I do not know anything about.

Q. Do you know anything about the easements of light, air and access in this neighborhood from the point of view of real estate? A. Yes.

Q. What? A. What do you want to know?

Q. I want to know what you know about the effect of the easements of light, air and access taken by the viaduct in Park Avenue in front of 2895
this Pershing Square property at the time that you sold it, which appears on your advertisement? A. What effect it had?

Q. Yes. A. It had not any effect on that property.

Q. None at all? A. Not the Pershing Square—

Q. But it had no value, those easements? A. Very little.

Q. Do you know that the value of the easements of light, air and access in spite of that viaduct, or some of them, were determined under a special

2896 act by the Commissioners of Appraisal? A. I do not know how it was determined.

Q. Don't you know that the Commissioners of Appraisal took testimony as to the value of the easements of light, air and access taken from property on Park Avenue, directly opposite the Pershing Square Building, and subject to the same viaduct? A. I do not know anything about a Commission taking testimony with respect to that viaduct.

Q. Do you know that the tenants, for instance,
2897 of the Belmont Hotel, directly opposite this property, received $179,000 from the City as the result of the depreciation in the value of that leasehold interest for that term, for the easement taken by the viaduct in respect of his leasehold interest? A. No, sir.

Q. You do not know that? A. No.

Q. You do not know anything about it? A. I do not know anything about that.

Q. And yet you come in here and testify that the easements of light, air and access of the elevated railroad on 42nd Street have no value and you have not found out the value determined in
2898 the judicial proceedings, as to the easements of light, air and access, as to property on the other side of the viaduct? A. Correct.

Redirect examination by Mr. LaMotte:

Q. You have been asked about a subway easement. You were more or less familiar with the subway easement under the Pershing Square Building, were you not? A. I am.

Q. What is paid for the acquisition of subway easements, such damage that results to the privately owned property by reason of burdening with the railroad easements? A. It is.

2899

Q. Would what was paid for easements which burdened private property like that be of any help to you in determining the value of the nature of easements concerning which you are asked by me the value? A. No, they would not.

Q. Would the fact that the Board of Assessors of the City of New York gave a damage to the property abutting the viaduct in Park Avenue, upon the theory of change of grade help you in any way concerning the value of the easements concerning which I asked you the value in this proceeding? A. It would not.

2900

By the Court:

Q. You say that you did not consider the viaduct injured the Pershing Square property? A. It does not. That is my opinion of it after a very close study of it.

Q. Was any damage allowed? A. That was before my time. That was the Grand Union Hotel. The title to this Pershing Square Building was in the City.

Mr. Nichols: Senator Boylan, who was here, testified, did he not, to damage even for the City—

Mr. LaMotte: Change of grade. There is no question about that.

2901

By Mr. LaMotte:

Q. Would the fact that the erection of the elevated structure in 42nd Street, injuring the abutting property, and the fact that the railroad paid damages to that abutting property, be of any help to you in determining or have any bearing upon the market value of the right that the railroad

2902 got, separate and independent from the abutting property? A. It would not.

Q. Would the fact that this railroad obtained from the Cunard Building $18,000 for the removal of some spur in some Morris Street down there, have any bearing upon the valuation of these easements in 42nd Street? A. It would not.

Q. Would that fact tend to change your opinion that you have expressed? A. It would not.

Recross examination by Mr. Nichols:

2903 Q. I show you a diagram of that Park Avenue viaduct, to refresh your recollection? A. I see it.

Mr. Nichols: I offer that in evidence so as to identify this.

Mr. LaMotte: I object to your offering that in evidence. You may ask the witness anything that you want to with respect to this, but it has nothing to do with this case, and it is incompetent, irrelevant and immaterial.

The Court: Only as respects the cross examination of the witness.

Mr. LaMotte: He may ask the witness anything about it that he wants to.

2904 The Court: You have it on the record that the lessee of the Belmont Hotel was paid substantial damages for interference with his easements of light, air and access, and what else do you want to show?

Mr. LaMotte: It does not show that, but it shows that he got an award for change of grade.

Q. There was prior to the erection of this viaduct an open cut, starting at the north end near 42nd Street, with an embankment beginning 30 feet north of 31st Street, and that was closed for vehicular traffic across the Park Avenue, 41st Street, was it not? A. Yes.

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Q. In the place of that open cut, through which the horse cars ran, they took down the embankment, and they restored vehicular access to and across 41st Street and they put up the viaduct as it now stands. That viaduct is how far from the building line? A. Well, the four widths of any ordinary sidewalk, in addition, I guess, fifteen feet more from the curb to the viaduct.

Q. The viaduct is about 40 feet wide, isn't it, and that leaves 50 feet on each side, isn't that about right? A. Yes.

2906

Q. So that there is a 50 foot open leeway on either side making 100 feet of unobstructed roadway left in Park Avenue since the viaduct came up there? A. Yes.

Q. And the viaduct occupied substantially just the same position in the middle of the street that was formerly taken by the tunnel, the embankment? A. Yes.

Q. 41st Street has been restored as a through street by putting up the viaduct? A. Yes.

Q. And the viaduct is about in front of the Pershing Square Building and the Belmont Hotel; opposite is about how high, about 20 feet? A. There is a grade, if you recall, running from 41st Street to—down 41st Street, so that it is at a different level at each foot.

2907

Q. I mean on the average as shown in this picture which you put in evidence, it is about 20 feet above the street level at that point? A. No, there is a peak there.

Q. As you go south in the viaduct you come to that rise which begins soon after you leave 42nd Street and continues so that when you get to 40th Street you are at grade with the viaduct again, are you not? A. Well, yes, almost at 41st Street, you are.

2908 Q. So that there is a very slight difference in the viaduct in the block between 40th and 41st Street, is there not? A. I think the viaduct comes at grade at 41st Street.

Q. What? A. It comes out on grade at 41st Street.

Q. There is very little that obstructs light, air and access on the block between 40th and 41st Streets? A. I do not think any.

Q. Then there is no change in grade there? A. That is my recollection of it now.

2909 Q. Do you know that the Murray Hill Hotel recovered $120,000 in this proceeding for the easement of light, air and access taken in that block by a structure that was put there, this viaduct of a few feet high?

Mr. LaMotte: Objected to, as the Change of Grade Commission—objected to as it was not for that. No property was taken and it was in a change of grade proceeding.

Q. Nothing was done there, except that they put the structure up there in the middle of the street, is that right? A. That is all; and then they opened the street across, 41st Street.

2910 Q. Was that not a benefit, the opening of that for vehicular traffic, and the only detriment was putting up the viaduct structure and taking the light, air and access? A. That is all.

Q. In preparing to testify that the easement of light, air and access, if of no value, you did not inquire as to what was actually covered by that viaduct? A. I cannot answer that question because I did not consider that was a light, air and access proceeding.

Q. You know about the amount paid for the

viaduct around the Grand Central Station, going around there? A. No, sir, I do not.

Q. Do you know of the recent very extensive projected job with reference to continuing that same viaduct around the east side of the Grand Central Station? A. Yes.

Q. Do you know upon what basis the City is transferring title to the space occupied by Park Avenue between 45th and 46th Street to the Grand Central Company? A. No; but I know that there are some exchanges going on.

Q. You know that the Grand Central Company 2912
will get the space now occupied by Park Avenue for the block between 45th and 46th Streets? A. I do not know anything about it, only I know that there is an exchange contemplated, but what the details are I do not know.

Q. Don't you know that they are going to put up one of the largest buildings in the City, if not in the world, over that space of Park Avenue, extending on either side so as to have the two blocks joined together in a single building, which will extend over Park Avenue by a couple of arch ways? A. What street? 2913

Q. Between 45th and 46th Streets? A. They are continuing the Vanderbilt Avenue a couple of blocks above.

Mr. Nichols: They are going to continue this viaduct around the other side, and then it is coming down inside this huge building that is going to be put up, but the point I am bringing out is that the consideration that the New York Central gets for that easement for the viaduct, as it goes around through Depew Place, on the west side of the Grand Central station, is the transfer of title to that portion of Park Avenue 200 feet by 140 feet; isn't that right?

2914

A. I do not know anything about it.

Q. Isn't that one of the most interesting transactions which has taken place in this very vicinity? A. It is a beneficial improvement for vehicular traffic.

Q. Does this overhead street then take light, air and access? A. From whom?

Q. From the properties abutting on it? A. The Commodore Hotel is there, and they have an easement in that Depew Place.

Q. But it takes it away from their own hotel,
2915 doesn't it? A. They are paying for it, and it is supposed to remain there.

Q. They got the right to close Depew Place by giving the City for the easement to conduct a viaduct on the west side on that shelf, the road that runs on the left side, they called it an easement in that transaction, didn't they? A. I do not know. Do you think I read legal papers?

Q. No, but the 42nd Street Association, they fill their publications, and have for the last year, with pictures of this most important transaction in the vicinity, most important, for which the people have
2916 been working there for years, and there has been legislation over it, enacted at the last Session, and a stormy meeting of the Board of Estimate and Apportionment, and it is a matter of the utmost notoriety, and you testified as to the value of the easements in this vicinity, and you say that you do not know about that most notorious transaction by the City itself? A. I do not know what it is called. You say a legal paper, what it is called, whether it is called an easement or what.

Q. You do not know what it is called? A. I know about the improvement, but I do not know about

the legal language used in that agreement between the City of New York and the New York Central.

Q. Do you call it an easement? A. No. I do not know whether it is an acquired easement or fee. All I know is that it is a physical thing that will take place, but how it is being done, I do not know.

Q. You know that in the negotiations the City figured an easement in Depew Place and conducted that viaduct around there on the overhead shelf, 27 feet wide, at $840,000 in exchange for that real estate which they deeded to the New York Central? A. No. 2918

Q. Are you familiar with the charges made by the City for the elevated structure, the elevated railroad structure, which it has authorized in the streets of New York?

Mr. LaMotte: Objected to. He is asking about the damages which the City is paying for the erection of elevated structures, and we have nothing to do with that.

A. I do not know.

Q. Don't you know this: that the Bureau of Franchises publishes, a Division of Franchises, publishes a pamphlet giving for all characters of 2919 overhead obstructions in the streets of New York the exact basis of determining the amount of payments, annual payments, for those privileges? A. I do not know that.

Q. Don't you know that the connecting of properties, such as Wanamakers, or the building down here, the Hudson Terminal, or the factories where they put pipes across the street, where property of the City is used, that the City has a uniform basis for charging for it? A. I know that they charge for such a privilege.

Q. And they base that upon a ratio stated in

2920 their regulations, on a basis of the value of the abutting property? A. I do not know that.

Q. The assessed valuation? A. I do not know.

Q. You don't know that they are charging for part of the elevated structure on that basis? A. No.

Q. The entrance to Gimbel Brothers, $2,000, do you know that? A. No.

Q. About the sale to the Bowery Bank of the adjoining premises, 50 feet and 98 feet and 9 inches, I think it is, just consummated from the
2921 Third Avenue Company to the Bowery Savings Bank; do you know of that sale? A. I know of such a sale.

Q. That property is just east and adjoining the Bowery Bank, isn't it? A. To the east.

Q. I mean east? A. Yes.

Q. That has a frontage of 50 feet as against a frontage of 104 feet for the Bowery Bank, isn't that right? A. It has a frontage of 50 feet.

Q. As against 104? A. About one-third of 230—about 70 feet, yes.

Q. It only ran half way through the block? A.
2922 Yes.

Q. The area is about 23% of the Bowery Savings Bank, 50 feet, as against 104 feet and half way there? A. Yes, you are correct.

Q. And the Bowery Bank paid for the large plot 104 feet frontage on 42nd Street, running clean through the block, $1,400,000 in 1921, didn't it? A. 1920, the deed did not pass until 1921.

Q. And they have recently bought further down, from Park Avenue down toward Lexington Avenue, a frontage of only 50 feet, and they just paid half that price, $700,000? A. They did.

Q. The building is old fashioned, isn't it? A.

Yes, an old fashioned building subject to a long term lease. It was all subject to a long term lease.

Q. And the building is worth how much, assessed for $25,000? A. I do not know what it was assessed for.

Q. Don't you know about the assessments? A. No.

Q. You did not consider it in trying to find out whether the elevated railroad structure, and the restoration of easements would be measured by the increase in the abutting property, you did not consider the assessed valuation then? A. No. 2924

Q. What was the value of the old building, that building? A. I do not know, but I can tell you, if you will tell me the street number.

Q. 118 and 120? A. It did not have any value.

Q. How much would that make a unit lot worth based on that recent sale? A. About $320,000.

Q. How much do you allow for plottage? A. About ten per cent.

Q. What was the value of a unit lot in the plot that the Bank first bought January 1st, 1921? A. About $225,000.

Q. So that there has been an increase from 1921 to 1924, three years, in a unit lot there from two hundred and twenty-five to three hundred and twenty thousand dollars? A. No; this sale was contemplated, this purchase was contemplated by the Bowery Savings Bank ever since they erected their building. 2925

Q. I am asking you a mathematical calculation? A. Oh, mathematically, yes.

Q. You spoke about a lease there. That lease is $35,000, isn't it? A. Yes.

Q. And that replaces a lease of $12,000 in 1924? A. I do not know, but it is subject to a lease for $25,000.

2926

Q. But the lease before that was $12,000, wasn't it? A. I do not know.

The Court: Is that all on your branch of the case?

Mr. LaMotte: This sale to Cunard, I did not know about that, and I wish to look into that. And there may be a few other documents and things that I may want to look into.

Mr. Roberts: On behalf of the Manhattan Railway Company, we want to put something in as to the revenue of the elevated system. Mr. Page has

2927 talked to me several times about it and has recently written me a letter, and I think I can get up something in perhaps one page that everybody would agree on, and we will put it in, and it will show the earnings of the system. The thing that I have will not encumber the record, and I think probably we will all agree upon it; that is, these earnings of the whole elevated system. I want to show that this is an earning property, that is, the system as a whole.

The Court: There won't be any dispute about that, I suppose.

2928 Mr. LaMotte: Get up your facts and we will probably agree on them.

Mr. Nichols: It is rather a grave decision to rest now.

The Court: I am going to find that this abutting property on both sides of the street, with and without this structure, is a certain sum, to which I dare say you will not complain, Mr. Nichols, and it is Mr. LaMotte's theory that that is immaterial.

Mr. LaMotte: You will have to make an award, of course.

The Court: Surely.

2929

Mr. Roberts: We will have an opportunity to file briefs?

The Court: Yes, and I want you to exchange briefs on all phases, and I do not think that any one will be prejudiced by resting the testimony here, because I think that there is sufficient to enable me to find that the abutting property in that block has been greatly enhanced in values since the removal of this structure, and I must find the difference before and after.

Mr. Nichols: I wish to recall Mr. Huntley a moment.

2930

ROBERT HUNTLEY, recalled by the claimants, testified as follows:

Redirect examination by Mr. Nichols:

Q. Are you familiar with the method by which the City determines the value of rights for overhead structures in streets in the City of New York? A. I am.

Q. How is that charge prescribed?

Mr. LaMotte: Objected to as incompetent, irrelevant and immaterial. The rights that the City grants to individuals are licenses and not permanent estate in the streets, and this cannot have any bearing on what your company owns in the street.

2931

Overruled. Exception by Mr. LaMotte.

A. There are certain rules settled by the City of New York, and the Board of Estimate and Apportionment for the Franchise Department—I believe that is the title of the pamphlet which sets forth in printed form the method in which the value of these franchises, or these rights to erect structures shall be determined.

2932 *Claimants' Witness—Robert Huntley—Redirect.*

Q. I show you a copy of the method of determining the value of such rights in the street, a printed form. Did you go to the Bureau of Franchises and obtain that? A. I obtained one some time ago. I do not know whether this is the one or not. It was either this one or one like it.

Q. Then you considered the value of the rights in a street granted by the City for the occupation and use of the street by the spur apart from the private street easements of light, air and access taken and acquired by the Railway Company from
2933 the abutting owners? A. I have.

Q. Have you computed those values? A. Yes.

Q. Are you familiar with the method adopted by the City to determine similar rights for elevated railway and other overhead structures in the street? A. I am.

Q. Does the pamphlet which you obtained from the City prescribe the method of determining the value of such rights taken, and a uniform method adopted by the City? A. Yes.

Q. In your opinion, does that method of determining the character and actual value of such
2934 rights in respect to the 42nd street spur in operation?

Same objection, ruling and exception.

A. I think it does, yes.

Q. Are you familiar with the fact that the elevated railway structures of the Manhattan Company have been erected pursuant to such rights, and Gimble Brothers, for instance? A. Yes.

Q. And by the application of the formula prescribed in this printed pamphlet? A. Yes.

Q. Issued by the City of New York? A. Yes, I understand so.

Q. Have you obtained the area in the street oc-

cupied by the elevated structures having engineering calculations? A. I have.

Q. And according to the methods prescribed by the City of New York? A. Yes.

Q. And have you applied the assessed valuation of the land and the properties upon which the structure abuts pursuant to the method prescribed by the City? A. I have.

Q. What is the amount chargeable for the spur upon that basis?

Mr. LaMotte: Objected to as incompetent, irrelevant and immaterial. 2936

Objection overruled. Exception by Mr. LaMotte.

A. $4,500,000.

Mr. Nichols: I offer the pamphlet in evidence, your Honor.

(Received in evidence and marked Claimants' Exhibit W.)

Recross examination by Mr. LaMotte:

Q. What area in 42nd Street did you consider? A. The entire area of the elevated structure in 42nd Street, the surface area.

Q. You mean the contents? A. No, the surface 2937 area, the number of square feet occupied by the structure, and in addition to that the cross section area and the lineal feet.

Q. Let us understand that. Perhaps if you will let me see that exhibit for one moment I can explain it to you. (Referring to Claimants' Exhibit W.) What did you do in getting that figure? A. I had the engineer—first I took it myself from a map scale and scaled it as before, and I got the engineers of the Interborough and they computed it for me.

Q. How much in width, how much of the width

2938 of the street did you figure? A. Just that which is occupied by the elevated structure.

Q. You measured from pillar to pillar? A. From the outside of the structure, both sides of the street.

Q. The pillars or the track? A. The platforms, you will find that there is a running footboard along all of that, and that is shown in yellow on the map.

Q. Then the area that you calculated was the space occupied by the track and the ties that hold the track? A. Track ties, foot-walk on the side,

2939 and stations and the middle track, and everything that is shown in there on yellow.

Q. Then you added to that the columns? A. No.

Q. What did you add to that? A. Just that flat area (indicating).

By the Court:

Q. What was the land in that area? A. I have not it unfortunately. I did not expect to be asked about that. I just came in this afternoon.

By Mr. LaMotte:

2940 Q. Did you include the white space between the tracks? A. No, because this contained cubical contents. I do not think that schedule would be of any use to you. I cannot tell you that.

Q. Is that all the area that you considered then, just what was occupied? A. Yes, what was occupied by the flat surface, the top of the surface, and the platform, and the ties, and the foot-walks, and the—

By the Court:

Q. You do not figure the cubical contents of the space occupied? A. There is another calculation

that enters into it. You take a cross section of a station running up to the top of the track, and that on a single track is about 5 feet by 12 feet, and then a car runs on top of that, and the space taken by the car is about 8 by 12½, something like that. I am only now speaking from memory, but I am quite sure, however, that I am fairly correct, and that is the first calculation, and that, if you will notice is in the form of lineal feet on Claimants' Exhibit W. You will notice just the base 5 by 12 car, and 8 by 12½, or something like that. That is the square feet in the cross section, and you will note then that there is a certain rate per lineal foot for different sized sections, the first 81 square feet is at the rate of $6, and you take $6 for that 81, and there is 160, and that would leave us 79 square feet, which would be taken at the rate of $2 per square foot, lineal feet; and then having arrived at that calculation for the first 100 feet, the ratio per lineal foot is based on this calculation for 160 feet. Then they scale that down for each fifty feet until you come to about 600 feet, and after that it all seems to run into—it seems to stop.

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Q. Are you assuming that the City will sell all this space at this rate? A. I used that to determine what would be the value of such a franchise.

Q. Assuming that the City gave the right to somebody to occupy it in that way? A. In that way.

Q. I suppose it is relatively a very little space in the street occupied by the structure instead of the elevated structure? A. Very little. The covered bridge across the street here, and there is a covered coal carrier, and there are covered tunnels underneath (indicating).

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Q. You take the Wanamaker's store, that is connected by an overhead bridge? A. Yes, that is one.

Q. And the Hudson & Manhattan Building? A. Yes, and you have the Gas people, and the Hudson River carriers, they have bridges from the docks and carriers to the conveyers. You will find a great many pipes on conveyers from buildings crossing over our waterfront streets to get it to the river. We have a special schedule for those things.

2945

By Mr. LaMotte:

Q. Does this rate differ on different streets? A. Yes; the rate is based upon assessed valuations of the abutting property and in this case you take the rate at which the City assesses per front foot the property on the north side of the street, that is at one price, and the property on the south side at another price. And then you take an average at this point in the street, and then the front foot value. There are two sections that are divided in Park Avenue and Lexington Avenue, two divisions there between Lexington and Third Avenues

2946

also, and you consider your figures and go into each one of them. I had the figures and I have gone into each one of them.

Q. You figure that if the City would give somebody the privilege to occupy the space that is now occupied by this elevated structure, and charged them for it at the rates mentioned in this pamphlet, that would amount to the sum that you have testified to? A. That would amount to the amount I have testified to, yes, based upon a calculation, capitalization at a certain rental, taking the, I might say take the rental base at 10%, and the capitalization based at 10%.

2947

Q. Do you want us to understand that in your opinion the fair market value of these easements would be worth that amount for that purpose? A. I mean to say that to the best of my knowledge if the City of New York—

Q. No. We are talking about the fair market value on December 7, 1923? A. I mean to say that that would be the fair market value for such an easement for such a purpose if it could pay the City of New York, and that is what the City of New York would charge.

By the Court:

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Q. That is the occupation of the space itself, for that occupation? A. The occupation of the surface area and the structure.

By Mr. LaMotte:

Q. And that is, the City could sell in the market, would have a market for it, and could sell on the market on December 7, 1923, that space for some kind of purpose at that price? A. Well, I should imagine that it would be so. I imagine that there are people that might buy it, I do not know who at the moment. It is not a common every day article of barter and sale.

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Q. Did you assume that it would be bought for a railroad? A. I did not assume that it would be bought for any particular purpose.

By the Court:

Q. Assuming that the City would permit some private company to erect a sidewalk up in the street where that structure is now and permit that structure to be maintained just as that present structure is, it could charge for that so much upon the rate that is established for occupying similar overhead structures in the City Streets? A. Yes.

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By Mr. LaMotte:

Q. You assume that the City would be a purchaser for it? A. I did not.

Q. Did you assume that the City had the legal right to give an individual the right to occupy the centre of the street like this railroad does? A. I assumed that from the record that there was a method which they followed, a legal method, but what it is I do not know,—that is, a calculation for allowing the use of the street for certain purposes, bridges, railroad structures, etc., and for

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the providing of a method of calculation.

Q. Did you assume anything with respect to the right of the City to grant to any individual the right to occupy the streets that this structure occupied?

The Court: He has answered that before and said no.

By Mr. Nichols:

Q. The City has an overhead street in 42nd Street, across from Park Avenue, hasn't it? A. Yes.

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Q. And it is conceivable that it might want to continue this system of overhead streets to meet the very rapidly growing districts, the needs of them? A. It has been proposed a number of times, to use this space taken from the railroad company.

Q. And this space by taking it away,—let me put it this way, that may be used, that space, for an overhead vehicular street, just as the City has two of them around the Grand Central Station? A. That might possibly be. It has been suggested in the newspapers.

Mr. LaMotte: I want to request the Court that

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in fixing the award, if you take the view, any one of the views which the railroad urges here, that you state in the award how much that is for these easements and how much for the railroad, and if you award for the easements, whether it is based upon the first proposition of the railroad, or this last proposition of the railroad. If you will please do that, your Honor.

By Mr. LaMotte:

Q. Is that your total valuation now? (Referring to a paper.) A. What is this $2,200,000?

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Q. That is the figure, I guess. A. I have said $3,600,000 and $4,500,000.

Q. It is your opinion that it should be the addition of those two sums, over eight million dollars? What do you intend to say as to that? A. I should say that it really ought to be, that is the fair value, that is the sum total value of everything that the elevated railroad has in 42nd Street.

Q. Your testimony is that in your opinion it is over eight million dollars? A. Everything that they have would be eight million dollars.

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(Both sides rest with the exception of proof as to the Third Avenue end, and as to the cost of the reconstruction work which is not quite finished.)

Mr. Roberts: Your Honor said that we might put in something to show the earnings of the system.

The Court: Both sides rest reserving the right to put in testimony as to the reconstruction work at 42nd Street and Third Avenue, and also a statement in re earning power of the whole system.

Mr. LaMotte: And the Cunard Building, your Honor.

The Court: Yes.

2956 *Case.*

(Claimants' brief to be served on Mr. LaMotte on December 15th, 1924, and Mr. LaMotte to serve replying brief December 29th, 1924.)

(Adjourned to January 12th, 1925.)

New York, September 22nd, 1925.

Appearances: L. H. LaMotte, Esq., J. O. Nichols, Esq., William D. Embree, Esq., William Roberts, Esq., William H. Page, Esq., Wellwood Murray, Esq. (for Central Union Trust Company).

2957 Francis J. Parks (representing William H. Page): I would like to offer in evidence this stipulation signed by the various attorneys in this matter. The original of this stipulation was filed with your Honor. It is a stipulation, dated June 17th, 1925, and signed by James L. Quackenbush, attorney for Interborough Rapid Transit Company, Murray Aldrich and Roberts, attorneys for Manhattan Railway Company, and George P. Nicholson, Corporation Counsel. I would like to have it copied in the minutes.

2958 "Supreme Court, New York County, Extraordinary Special Term.

"Matter of the 42nd Street Elevated Spur, etc.

"Stipulation.

"It is hereby stipulated, at the request of the City of New York, subject to objection on the grounds of irrelevancy, incompetency and immateriality, by the Railway Companies and Trust Companies, as follows:

"(1) As to removal of spur and reconstruction of stairways and station of the Third Avenue Railroad at and on East 42nd Street, viz.:

1924

May 22 Completion of spur removal.

2959

Aug. 27 Cross Girder over 42nd St. erected.
Nov. 26 Southwest stairway open to public.
Dec. 8 Northwest stairway open to public.
1925
Mar. 3 Northeast stairway open to public.
Mar. 3 Underslung bridge over Third Ave. open to public.
Mar. 17 Painting of structures completed.

"(2) Cost of removal of the spur by Harden Contracting Co., and moneys received on account of same, were viz.:

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Expenses:	
Paid City for Structure	$235.00
Payments incidental to cost of removal:	
Engine hire	1,551.00
Permits and Bonds	1,493.00
Payrolls and Overtime	16,065.47
Total	$19,344.47
Payments received on account of above from sale of scrap	6,000.00
Deficit	$13,344.47

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"(3) The combined results of ticket sales and fares on both railways collected at 42nd Street and Third Avenue Elevated and 42nd Street Grand Central & Lexington Ave. Subway Stations for 1922, 1923, 1924 and to date in 1925, as shown by the figures filed by the Interborough Rapid Transit Co., with the Transit Commission of the State of New York, and are set forth in the 'Tabulation' hereto attached.

"(4) The comparative results of ticket sales and

2962

fares on the 3rd Avenue Elevated Railway at 34th Street, 42nd Street, and 59th Street stations for the years 1922, 1923, 1924 and to date in 1925 as shown by the figures filed in like manner are set forth in an additional 'Tabulation' hereto attached:

"Dated, New York, June 17th, 1925.

"James L. Quackenbush, Attorney for Interborough Rapid Transit Co.

"Murray Aldrich & Roberts, Attorneys for Manhattan Railway Co.

2963 "George P. Nicholson, Corporation Counsel."

"TABULATION.

"INTERBOROUGH AND MANHATTAN.

"Combined results of ticket sales and fares on both railways collected at 42nd St. and 3rd Ave. Elevated and 42nd St. Grand Central & Lexington Ave. Subway Stations for 1922, 1923, 1924 and 1925.

Month	42nd St. Subway, Grand Central and Lexington Ave. Stations	42nd St. Elevated, 3rd and Park Ave. Stations	Grand Total
	—1922—		
Jan.	2,752,133	392,760	3,144,893
Feb.	2,423,261	355,920	2,784,181
Mar.	2,816,669	403,920	3,220,589
Apr.	2,628,951	401,740	3,030,691
May	2,619,917	407,520	3,027,437
June	2,468,678	379,880	2,848,558
July	2,222,341	385,500	2,607,841
Aug.	2,296,774	396,450	2,693,224
Sept.	2,450,969	409,550	2,860,519
Oct.	2,744,548	431,340	3,175,888
Nov.	2,735,907	402,060	3,137,967
Dec.	2,975,723	411,340	3,387,063
	31,140,871	4,777,980	35,918,851

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	—1923—		
Jan.	3,083,435	408,160	3,491,595
Feb.	2,699,746	360,100	3,059,846
Mar.	3,090,021	428,020	3,518,041
Apr.	2,885,414	452,216	3,337,630
May	2,845,351	483,349	3,328,700
June	2,722,985	474,181	3,197,166
July	2,442,587	444,158	2,886,745
Aug.	2,426,774	455,771	2,882,545
Sept.	2,567,852	462,990	3,030,842
Oct.	3,102,208	512,421	3,614,629
Nov.	3,009,837	475,508	3,485,345
*Dec.	3,198,523	456,441	3,654,964
	34,074,733	5,413,315	39,488,048

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	—1924—		
Jan.	3,281,836	428,517	3,710,353
Feb.	3,022,401	384,811	3,407,212
Mar.	3,261,729	431,585	3,693,314
Apr.	3,201,689	428,277	3,629,966
**May	3,141,628	444,113	3,585,741
June	2,859,353	432,437	3,291,790
July	2,595,389	425,331	3,020,720
Aug.	2,488,361	414,960	2,903,321
Sept.	2,886,792	429,271	3,316,063
Oct.	3,206,521	468,848	3,675,369
Nov.	3,065,911	417,549	3,483,460
Dec.	3,417,454	454,882	3,852,336
	36,429,064	5,140,581	41,569,645

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	—1925—		
Jan.	3,558,976	431,692	3,990,668
Feb.	3,031,083	398,165	3,429,248
***Mar.	3,356,855	464,513	3,811,368
Apr.	3,267,192	468,995	3,736,187
May	3,151,410	474,748	3,626,158

* Dec. 7, 1923, City vested title, the spur stopped operation and the Park Avenue El. Station was closed.
** Removal of spur completed.
*** Reconstruction of Station changes and new stairway completed."

2968 *Case.*

"TABULATION.

(COMPARATIVE RESULTS OF TICKET SALES AND FARES.)

Manhattan, Third Avenue El., 34th St., 42nd St. and 59th St. Stations.

Month	34th St. and 3rd Ave. El. Stations	42nd St. and 3rd Ave. El. and Park Ave. Stations	59th St. and 3rd Ave. El. Stations
	—1922—		
Jan.	292,080	392,760	293,400
Feb.	271,300	355,920	265,500
Mar.	313,680	403,920	306,740
2969 Apr.	295,920	401,740	311,500
May	295,820	407,520	307,300
June	273,080	379,880	268,960
July	251,000	385,500	251,700
Aug.	268,200	396,450	246,540
Sept.	282,920	409,550	277,460
Oct.	307,880	431,340	311,300
Nov.	298,900	402,060	300,200
Dec.	305,150	411,340	315,900
	3,455,930	4,777,980	3,456,500
	—1923—		
Jan.	301,880	408,160	289,420
Feb.	269,960	360,100	259,080
Mar.	330,020	428,020	305,800
2970 Apr.	333,017	452,216	312,737
May	344,684	483,349	320,624
June	317,741	474,181	285,352
July	285,141	444,158	255,425
Aug.	298,920	455,771	252,923
Sept.	300,608	462,990	276,805
Oct.	365,359	512,421	324,195
Nov.	336,215	475,508	309,050
*Dec.	352,205	436,441	330,662
	3,835,570	5,413,315	3,522,073

	—1924—		
Jan.	334,202	428,517	289,580
Feb.	308,436	384,811	267,197
Mar.	340,304	431,585	298,293
Apr.	339,513	428,277	297,901
**May	334,936	444,113	308,791
June	311,594	432,437	287,332
July	287,864	425,331	258,662
Aug.	284,095	414,960	237,151
Sept.	313,030	429,271	277,708
Oct.	349,216	468,848	308,465
Nov.	309,913	417,549	286,152
Dec.	334,742	434,882	312,109
	3,847,845	5,140,581	3,429,341
	—1925—		
Jan.	326,105	431,692	293,875
Feb.	302,253	398,165	268,881
***Mar.	340,721	464,513	298,224
Apr.	334,381	468,995	304,674
May	319,372	474,748	300,840
June			
July			
Aug.			
Sept.			
Oct.			

* Dec. 7, 1923, City vested title, the spur stopped operation and the Park Avenue El. Station was closed. 2973

** Removal of spur completed.

*** Reconstruction of Station changes and new stairway completed."

FRANK D. ALLEN, recalled.

Direct examination by Mr. Nichols:

Q. Mr. Allen, did you have charge of making the requisitions for the payment for easements acquired by the Manhattan Railway Company, for the purpose of maintenance of the railway? A. I have had.

Q. And are one of the Committee in charge of

2974 negotiations, and have been for a great many years? A. Yes, sir.

Q. Are you familiar with the negotiations for the easements necessary for the maintenance of the new stairway constructed at the southwest corner of East 42nd Street and Third Avenue, in accordance with the drawing No. 22941, attached to the certificate and order of the Transit Commission, approving and directing the reconstruction work at that point? A. Yes, sir.

The Court: Is there any dispute here as to the
2975 nature and character of the changes made there, at 42nd Street and Third Avenue, or the amount paid for the easements?

Mr. Nichols: I think not, your Honor. Can we agree upon that, Mr. LaMotte?

Mr. LaMotte: I don't dispute the amount; I dispute the right to recover.

The Court: I understand that, but I thought we could agree upon the figures.

Mr. LaMotte: I want my objection on the record. I don't dispute that whatever Mr. Allen says they paid.

2976 The Court: All right, come right to that.

Q. Have you the usual forms of receipt for payments for the easements from the owners and the lessees of the property in front of which the stairway is erected at the southwest corner of 42nd Street and Third Avenue? A. Well, there is a receipt here, but the best evidence is the conveyance and release itself. We paid the consideration named in this instrument.

Q. And the consideration is properly named in the conveyance and release? A. It is, yes, sir.

The Court: Does that release describe the nature of the easement acquired?

The Witness: It does, yes, sir.

Q. And that was the easement, and only the easement necessitated by the reconstruction and the new stairway? A. Yes, sir.

Mr. Nichols: I offer it in evidence.

Mr. LaMotte: I object to it as immaterial and irrelevant, and for the special reason that the cost of the erection of the southwest stairway is not caused by the removal of the spur. The City is paying for the stairway which was acquired in connection with the spur at Park Avenue, and it is not called upon to pay for that stairway, and then, at 2978
the same time, to pay for a new stairway on the southwest corner to take its place.

The Court: That presents, I assume, a question of law, does it not?

Mr. LaMotte: This alteration doesn't follow and isn't necessarily a result of the removal of the spur, and the company is not entitled to recover for the reason that they can take the money that we give them for the stairway.

The Court: Overruled. I will receive it and consider that later.

Mr. LaMotte: Exception. 2979

(Received in evidence and marked Claimants' Exhibit X.)

Q. Was that settlement made after consultation with, and with the approval of Mr. Page, representing the property owners?

Mr. LaMotte: I object to that as immaterial and irrelevant.

The Court: What difference does that make?

Mr. Nichols: Simply, that instead of throwing the responsibility upon the Court by instituting condemnation proceedings, so that the amount of our payment might be without criticism, I feel it

2980 is proper to adopt the course which we always do in carrying out 99 per cent. of our cases in making settlements.

The Court: I don't see that it makes much difference, but I will allow it.

Mr. LaMotte: Exception.

Mr. LaMotte: They paid the money, I am not disputing it.

The Court: What was the amount of the consideration?

The Witness: $2,500.

2981 Q. That was to the owner of the property? A. Yes, sir.

Q. And how much to the lessee? A. We paid to the lessee $500.

Mr. LaMotte: Was that $3,000 total?

The Witness: Yes, sir; we obtained from the lessee a conveyance and release, so far as his interests were concerned.

The Witness: May this paper be marked in evidence, this second release executed by the lessee?

The Court: Yes, mark it in evidence.

(Received in evidence and marked Claimants' Exhibit Y.)

2982

GEORGE H. PEGRAM, called as a witness in behalf of Interborough Rapid Transit Company, being duly sworn, testified as follows:

Direct examination by Mr. Nichols:

Q. Mr. Pegram, what is your business? A. Chief engineer of the Interborough Rapid Transit Company.

Q. What were your duties relative to the reconstruction work following removal of the 42nd Street spur and the order of the Rapid Transit Commission relating thereto? A. I had charge of

the erection and preparing the detailed plans from the plan approved by the Commission, and ordering the execution of the work.

Q. Are you familiar with the drawing No. 22941 accompanying the order of the Commission? A. Yes, sir.

Q. And did you direct that the work indicated by that plan should be done in accordance therewith? A. Yes, sir.

Q. Did you supervise the work as it was done? A. Yes.

Q. Has that work been completed? A. Yes, sir. 2984

Q. And in accordance with the plan of the Transit Commission? A. Yes, sir.

Q. And their authorization? A. Yes, sir.

Q. Have the various charges in relation to the cost of that work been allocated under your direction? A. Yes, sir.

Q. Will you describe briefly the system under which the cost charges have been allocated? A. Of course, in our organization, where we not only do work in our department through means of subdepartments, but also have work done by other departments, for instance, the car equipment department, motor car department and others, it is necessary that all charges shall finally be collected in the auditor's office. The main object in our supervision is to see that there is evidence of the receipts of material and the expenditures, and that these evidences are transmitted to the auditor for his account. For instance, any material that has to be obtained through the market, and of course, preferably by competitive bidding when it can be so obtained is contracted through outside parties. For instance, the structural steel work, and the ornamental iron work. And this work would natur- 2985

ally be subjected to competitive bidding, and such was done when the order is placed.

The Court: Is there any question as to the cost of this?

Mr. Nichols: I don't see how there can be, your Honor. I have prepared a detailed statement of every cent of expenditure. I suppose there are perhaps two or three thousand items. He has submitted it to the City months ago, last May, and we have our auditor, Mr. Starrett, here, who has charge of collecting it, and it has been prepared
2987 with the utmost care.

The Court: I do not believe the City will require you to go into every one of those details, will you, Mr. LaMotte?

Mr. LaMotte: The first thing is that their charges, as I understand it, amount to nearly $100,000.

The Court: For this work?

Mr. LaMotte: For this work. Now, of course, I don't know a thing about it. I sent Mr. Breckenridge, my witness, to examine the work. He said it is impossible for him to tell really what was done
2988 there after it was done. Now, I suppose if the company says they spent this money I have no way of proving that they did not, and they probably did, for all I know, but the question of the necessity of it is what I dispute. Not only the necessity of all this work, but work which was done which is not included in the order of the Transit Commission. I also maintain that the order of the Transit Commission is not even binding upon your Honor, but your Honor has to determine as to what was necessary to be done as a result of removal of that spur. For instance, the Transit Commission gave permission to put a stairway on the

2989

southwest corner. That was not caused by the removal of the spur. If it was necessitated at all, it was necessitated by the increase in the traffic. The way the thing is now, I do not know how it can be shaped up.

The Court: Isn't it proper, certainly not improper, for you to permit this witness to testify as to the amount that was expended there for those changes, in round figures? Then you may cross examine him as to any part of it that you claim was not necessary, so as to develop for my information your contention?

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Mr. LaMotte: Well, I have no objection to that.

The Court: Why do you not ask this witness to explain generally the work that was done? Is there a plan of the Public Service Commission?

Mr. Nichols: Yes, your Honor, it is in evidence, introduced by the City.

By the Court:

Q. Did you follow that plan in making your changes there? A. Yes, sir.

Q. And did you do any work not called for by the plan? A. I don't know of any work not called for by the plan, except some painting that was done in painting the new work. Of course, if you build part of a house new, you are obliged to paint the adjoining part.

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Q. Looking at Claimants' Exhibit G, do I understand you to say that you did the work called for by that? A. Yes, sir.

Q. And no other work, except some additional painting? A. That I am aware of.

Q. What was the cost of the work? A. $94,795.39.

Q. I want you to explain, in a general way, what you did. You built how many stairways?

2992 A. We built three stairways, two on the west side of Third Avenue and one on the east side, at the northeast corner of Third Avenue and 42nd Street.

Q. Did you entirely rebuild that stairway at the northwest corner of Third Avenue and 42nd Street? There was one there, was there not? A. Yes, sir.

Q. Did you rebuild that? A. We replaced that.

Q. You built one at the southwest corner? A. The southwest corner.

Q. And one at the northeast corner? A. One at the northeast corner.

2993 Q. What other changes did you make, in a general way? A. The old station was really a terminal of the spur, where transfer was made from the Third Avenue line to the spur. That projected out beyond the lines of Third Avenue in such way that the removal of the spur required part of that station to be removed, and, in fact, the accommodation of traffic required it all to be removed and practically a new station at that side of the elevated erected.

Q. Were those changes you now refer to called for by Claimants' Exhibit G? A. Yes, sir. Also

2994 the circuit breaker house and the trackman's house was located on the spur. That was removed with the spur and a new circuit breaker house and a new trackman's house was required to be constructed. It is there shown, the trackman's house in this location and the circuit breaker's house in this location.

Cross examination by Mr. LaMotte:

Q. Mr. Pegram, what was the last elevated railroad station that was built, new? A. The last I remember was 101st Street.

Q. When was the 38th Street and Sixth Avenue

station built? A. I think that was built some time before the war. That is as I remember. I remember the 101st Street station was built subsequent to that—I should say the 151st Street station. That is the last one I recall being built. 2995

Q. That 38th Street station is a double station, isn't it? A. Yes, sir.

Q. How many stairways has it? A. Four.

Q. What did that cost the company to build, new? A. I don't recall now.

Q. Wasn't it around $40,000? A. Oh, it must have been more than that, was built before the war. 2996

Q. I know. It was built about ten years ago. That was built absolutely new, wasn't it? A. Yes, sir.

Q. A double station? A. Yes, sir.

Q. Four stairways? A. Yes, sir.

Q. Isn't it a fact that that cost in the neighborhood of $40,000? A. I should guess about $50,000, I understand.

Q. Would you say it wasn't forty? A. Well, I could pretty safely say it was more than that.

Q. Well, can't you get that accurate information? A. We can get it exact, yes, sir. 2997

The Court: What stairway is that, again?

Mr. Nichols: 38th Street and Sixth Avenue.

Q. In this particular case you changed the northwest stairway, as I understand it? A. Yes, sir.

Q. Did you use any old material? A. I think not.

Q. Well, don't you know. Can you tell whether you did or not? A. We used it if it could be made adaptable.

Q. Well, was any of that adaptable? A. In some

2998 parts of this station we used old material, in others we didn't.

Q. Could you tell whether you used any of the old stuff? A. No, sir.

Q. And you built a new stairway at the southwest corner? A. Yes, sir.

Q. Do you know what that cost, just that stairway?' A. No, it was built as part of the contract for the three stairways.

Q. Then you built the stairway at the northeast corner? A. Yes, sir.

2999 Q. That wasn't included in this plan, was it? A. No, sir.

Q. Do you know what that cost? A. The cost is separated in the statement. I don't recall now exactly.

Q. Is it included in the ninety something thousand dollars you have mentioned? A. No, sir.

Q. Is it, or isn't it? A. No, it is not.

Q. And in that ninety some thousand dollars, so far as the stairways are concerned, it includes simply the erection of the new one on the southwest corner and the alteration of the old one on

3000 the northwest corner, so far as the stairways are concerned? A. No, sir.

Q. What else does it include in the way of stairways? A. Why, includes a change of the stairway on the east side. The former stairway went up to the platform inside of the ticket control. It was necessary to build a new stairway in place of that that would go outside the ticket control.

Q. Where is that? A. That was on the east station, what we call the northbound station.

Q. You mean the south stairway on the northbound station? A. No; the northeast corner. This

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part marked in red is really new. Here is the bridge coming across 42nd Street (indicating).

Q. I understood you to say that, so far as that northeast stairway was concerned, it wasn't included in this ninety some thousand dollars? A. That is from the bridge level down to the sidewalk.

Q. That is, you merely meant that you hadn't included from the bridge level down to the sidewalk? A. Yes, sir.

Q. And [illegible] is sum that you have given is the alteration from the bridge level up, is that right? 3002
A. Yes, sir.

Q. Now, what did that cost? A. That could, I presume, be segregated, but it is not given separately.

Q. You can't state what that cost? A. No, sir, not offhand.

Q. So you can't state what the southwest stairway cost or what the northwest stairway cost or what this particular improvement of the northeast stairway cost; you can't state those separately at all? A. No; any more than you can state certain parts of a floor that were laid at one job. 3003
This was part of one big job.

Q. All right. Is there anything included in these estimates as to the southeast stairway? A. No, sir.

Q. Nothing at all? A. No.

The Court: Is there a southeast stairway?

Mr. LaMotte: That was there.

The Court: That was taken down?

Mr. LaMotte: No, that is still there, I understand; he hasn't changed it.

The Court: You really have four stairways there now?

3004 Mr. La Motte: Four now, one of them not included in this estimate at all, one of the new ones,

Mr. Nichols: Only one.

Q. How much did it cost to remove or change the circuit breaker and the tool house? A. That was kept separate. I think that can be given independently.

Q. Do you know, Mr. Pegram? A. No.

The Court: Are you going to want these figures?

Mr. LaMotte: I don't see how else we can do.

The Court: I thought if you did, that you
3005 ought to get it now. Where are these papers that you have? Give them to the witness.

Mr. LaMotte: Here is an itemized statement of all the expenditures.

The Witness: We have those costs separated so that they can be determined.

Q. In addition to building these stairways what else did you do on the property? A. Well, there was a stairway from the express platform which is above the local platform changed in the location on the west side, the southbound platform. In addition to that we had to practically remove
3006 the old station house, with its toilet rooms, waiting rooms and ticket office, and construct a new one.

Q. Did you construct a new toilet? A. Yes, sir.

Q. Did you construct new canopies? A. Yes, sir.

Q. Roofs? A. Within the station limits proper, replaced those removals.

Q. Didn't you build new ones where the old ones were, without removal? A. No, sir.

Q. Didn't you build new platforms? A. Only to replace that that was removed.

Q. Didn't you remove lots that weren't necessary to be replaced? A. No, sir.

Q. To renew? A. No, sir.

Q. Do you know what you spent on your toilets? A. No, sir; they were simply part of the station proper.

Q. Do you know what you spent on the new canopies? A. No, sir.

Q. Can you, in any of these, give any detailed estimate as to the different cost of the various parts of this work? A. I think the cost of the different parts might, in a measure, be worked out by following back through the original reports of cost. That is the only way. There was no occasion for 3008 keeping these things separate.

Q. How many supports to the railroad did you remove? A. From the street?

Q. Yes. A. We removed the two columns that were within the curb lines of 42nd Street, back beyond the curb lines.

Q. Do you know, Mr. Pegram, that there was an estimate made of the cost of doing this work, according to this plan— A. Yes, sir.

Q. Before the work was done? A. I had an estimate prepared in my own office.

Q. And that estimate amounted to something 3009 over $60,000? A. I had an estimate prepared in my own office before the work was done.

Q. Do you know that that evidence was here in court, and it was offered in evidence and not received at that time, where you estimated the cost of doing this work according to this plan which is in evidence was around $60,000? A. I made the estimate?

Q. No; do you know that such an estimate was in existence, made by your company?

The Court: And was offered in evidence in court here, in this proceeding?

3010 A. Well, I don't know that it was offered in evidence in court. I know that an estimate was made.

Q. And do you know that that estimate was in the neighborhood of $60,000? A. I have checked the estimate we made—

Q. No, do you know that or don't you? A. Well, it depends on what that estimate includes.

Q. Everything shown on that plan which has been offered in evidence? A. No, sir, I don't know it. I don't believe it.

Q. Let us assume that that estimate was $65,000,

3011 which I know to be the correct amount— A. I know it is not true.

The Court: There is an estimate there apparently where $65,000 was mentioned.

Q. What is the sum that you gave? Ninety what? A. I don't know that this estimate that I have—

Q. I am asking you to assume it; I am not asking you to know it. Assume that the estimate I refer to is $65,000, what is your estimate here? A. My estimate is $101,975.

Q. I thought it was ninety-four. A. No, sir.

The Court: That was the final cost. It ran be-

3012 low the estimate.

Q. How much of that is for overhead? A. 10 per cent.

Q. How much is that in dollars and cents?

Mr. Nichols: Mr. LaMotte, I would refresh your recollection about the estimate. Here on the actual cost, the labor and the material cost are $68,106, and that corresponds to the estimate that was put in on those items. I don't remember the exact amount, but it is very close.

Mr. LaMotte: That is near enough.

Q. I want to find out, Mr. Pegram, from you,

what makes up the difference between $68,000 and the $101,000? A. Without having that sheet you are referring to I presume we added six per cent. to the labor for compensation insurance and ten per cent. to the amount—

Q. How much would that amount to. Just give us the items that make up this difference? A. That is probably given on that sheet.

Q. Here is the sheet (handing witness paper).

The Court: Indicate how the difference occurs.

The Witness: Compensation insurance at six per cent. is shown on this estimate as $2,432.61. 3014

The Court: Is that the one Mr. LaMotte just handed you?

The Witness: Yes, sir.

The Court: What is shown on the other?

The Witness: It is combined in the other in the total. I have no doubt it is the same. It is simply a summary of these different items.

Q. Go ahead and read the summary off. Let us see where you make that.

The Court: See where the difference comes in, is that what you mean?

Mr. LaMotte: Yes, that is what I mean. 3015

The Witness: The difference between the estimate and the final cost?

The Court: Yes.

The Witness: This is the final cost given here.

The Court: $94,000?

The Witness: $94,795.

The Court: Were there certain things included in the final cost that were not included in the original estimate?

The Witness: No, sir, except this, that in the final cost a number of cables that were estimated to be added to the supply of power to the exten-

sion of the Queensborough at Eighth Avenue, and also the Corona line to Flushing, were not included. They were included in the original estimate, but they have not been included in the cost, because they have never been installed.

Q. What does make up the difference between the $69,000 and the $94,000? A. Nothing makes up that difference except those cables that are not installed.

The Court: You didn't install them, therefore they wouldn't be in this $94,000?

3017 The Witness: No, sir. There is what was actually expended, and this is what was estimated to be expended.

Mr. Nichols: Could I explain how the difference occurs?

The Court: Yes.

Mr. Nichols: There is $68,000 that represents the actual cost. There were several ducts and power cables with telephone wires and all this electrical apparatus that had to be put under ground. That explains that $14,607, and the construction of the duct in which they were put was $2,838. Those

3018 are the only additional items to the $68,000 representing the labor and material cost of the station part of it itself, except the workmen's compensation and the usual ten per cent. addition for the general overhead, superintendence, and so forth. So that makes up the total of $94,795.39. And there appears to be a discrepancy of about $3,000 in the original estimate from the actual cost. I don't think that is important in any sense.

Q. Did you ever see that original estimate? A. Yes, sir.

Q. Don't you know that that original estimate was $65,078? A. I haven't the estimate with me.

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Q. And don't you know that that included overhead? A. May I see that estimate and see what it covers?

Q. That is Mr. Burkan's estimate (handing witness paper). Doesn't that estimate include every overhead? A. Well, if that is Mr. Burkan's estimate, he ought to explain it.

Mr. Nichols: That is not your own estimate?

The Witness: No, sir; I have my estimate there.

Mr. Nichols: Well, come to that.

The Witness: My estimate was reported to Mr. Hedley in a letter under date of October 3rd, 1923.

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Q. Don't you know that, in that estimate, they included $3,000 for engineering, superintending, legal and other expenses? A. I am not familiar with that estimate. I was alluding to my own estimate all the time.

Q. And included $2,873, for omissions and contingencies? A. No, I don't think I have ever seen that estimate.

Redirect examination by Mr. Nichols:

Q. There were three stairways at 42nd Street and Third Avenue serving the station before the changes were made, were there not? A. Yes, sir.

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Q. And now there are four? A. Yes.

Q. The fourth stairway is the only new stairway that has been put up. The other stairway work has been merely adaptations of the old stairways to the new layout, such as changes in the character in the station—? A. Well, at that location there are two additional stairways, one at the southeast corner and one at the northeast corner.

Q. Well, I am referring to the work that appears here in the accounts. A. Oh, yes, there is only one additional stairway included in the account.

3022 Q. That other stairway, which doesn't at all appear in this account, is one ordered by the Transit Commission? A. Yes, sir.

Q. At the same time, but which they held was work which should be done, but should not be considered as necessitated by the tearing down of the spur? A. Yes, sir.

Q. So it was not included in their order? A. Yes, sir.

Q. And we agreed to take their decision as to what was necessitated by the spur removal?

3023 Mr. LaMotte: I want to state here that no such order of the Transit Commission necessitated any of these improvements. They permitted it, gave permission to the railroad company if they wished to, to construct that southwest stairway and the northeast stairway. There was no direction to do it at all.

The Court: That is in evidence, is it?

Mr. LaMotte: Yes, sir.

The Court: That is a written order.

Mr. Nichols: The order speaks for itself, of course.

3024 Mr. LaMotte: It was not a direction at all.

Q. Mr. Pegram, you are familiar with the certificate and order of the Transit Commission under which this work was done and to which the drawing 22491 is attached, are you not? A. Only generally.

Q. Let me get it clear. And nothing appears in that ninety-four thousand odd dollars except work done under that plan, is that right? A. Yes, sir.

Q. Did you go over the accounting presented by Mr. Starrett in detail and eliminate all items charged to that work which were not strictly in ac-

cordance with the plan attached to the order of the Transit Commission? A. Yes, sir.

Q. Under my direction? A. Yes, sir.

Q. Did you go over the itemized statement of the details of expenditure attached to the sheet which has been referred to in your testimony, containing the total of $94,795.39 with all the foremen that were in charge of the work, and who reported the proportionate cost? A. Well, not necessarily with all of the foremen; with all people who could give intelligent—

Q. I have called them foremen; I mean the ones 3026
that were responsible under your direction? A. Yes, all parties who were responsible.

Q. And they were showed the itemized estimate, I suppose, of two or three thousand dollars, attached to this sheet which contains the summary of cost? A. Yes, sir.

Q. In addition to that, do you know what checking up and supervision was had by the Transit Commission itself to see whether the work was done pursuant to its order, and that the expenditures charged against that work were correctly charged? A. The Transit Commission nearly al- 3027
ways supervises and keeps careful check of the cost of work of this character, because they may have to certify as to increase in capital, or it may be that the City may have to pay part of the cost, and it is their custom to keep careful account of the cost, and they have done so in this case.

Mr. LaMotte: You were asked whether the Transit Commission actually did it in this case or what they did actually do in this case; not what was customary; what did they do?

The Witness: They kept a check on the cost of the work.

3028 Q. Do you know whether Mr. Edward W. Schlechtiger of the Transit Commission was assigned daily and supervised the work down there? A. Yes, sir.

Q. He did? A. Yes, sir.

Q. That was so? A. Yes, sir.

The Court: If he is here now, why don't you prove it through him?

Mr. Nichols: I will prove it through him, if there is any question about it.

Q. Now, in regard to the items of insurance com-
3029 pensation, appearing as part of that total, what was your basis of using six per cent.? A. We were told by the auditor to use that basis, to use six per cent.

Q. What precedents have you in mind in that connection, if any? A. All our precedents are that we ordinarily—unless we follow the book giving the rates, the state rates, we adopt ten per cent.

The Court: Six per cent.

The Witness: Ten per cent.

Q. This is six instead of the usual ten? A. This is the only case I know of. If we had adopted
3030 the rates given in the state book, it would have been over fifteen per cent. If you take and apply the rates to the items of labor in this account, the proper rate, it would amount to over 15 per cent.

Q. We carried that on our books at the lowest figure representing the actual cost, rather than the theoretical figure furnished by the state book? A. Yes, sir.

Q. And that you believe is the lowest amount which fairly represented the cost of the insurance? A. I think it underestimates the cost of the insurance. In fact, we figured out the actual insurance.

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It amounts to over 15 per cent. We have charged six per cent.

Q. Now, about the general overhead of ten per cent.?

The Court: That is customary.

Q. That is the customary and usual amount? A. All of our contracts with the city call for that.

GEORGE W. BURPEE, recalled for further examination, testified as follows:

Direct examination by Mr. Nichols:

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Q. Mr. Burpee, have you made a study of all the elements of value which in your opinion should be attributed to the property taken in this proceeding?

Mr. LaMotte: I might as well call your Honor's attention—

The Court: Let him finish his question. Have you finished your question?

Mr. Nichols: Yes.

A. Yes, sir.

Mr. LaMotte: As I understand it, when we adjourned last spring the only matter to be finished up was the alteration to be made at the Third Avenue station. Mr. Burpee is called to testify and open up this question as to the value of this spur, and I certainly shall object to it, as that question has been fought out and closed.

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The Court: It was my understanding that there was only one subject left, Mr. Nichols, and that was the changes at 42nd Street.

Q. In addition to the qualifications which you have already stated to the Court, will you state your experience with reference to the valuations of railroad properties as entities, and other ex-

3034 perience bearing upon your qualification to testify to the value of the property taken in this proceeding.

Mr. LaMotte: That has all been given in this case.

The Court: I thought he went into his qualifications very fully. Is there something additional that you want to bring out?

Mr. Nichols: He has been practically, ever since we last proceeded with the testimony engaged in the valuation—

3035 The Court: All right, any additional experience he has had, I will let him testify to.

Q. All right. Additional experience only. A. I have just completed a study of all the physical values of all the bids appearing on the balance sheets of the five constituent companies, to make up the proposed new Nickel Plate system, for the purpose of assisting the Interstate Commerce Commission in determining whether the ratios proposed for extension of stocks of the constituent companies were fair on that basis. I have also made a study for the New York, New Haven &

3036 Hartford Railroad Company of the values of its property between Woodlawn and 42nd Street for use in the commutation service. I participated in an extensive examination of the Chicago, Milwaukee & St. Paul Railroad Company, all its business affairs, early in this year. I am making an exhaustive study of the rapid transit conditions in the City of Cleveland. I made an extensive survey of the Green Bay & Western Railway for prospective purchasers early this year. I am at the present time making a valuation of terminal property of the Canada Steamship Lines in Toronto, which is being condemned by the Board of Harbor Commis-

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sioners; I am making a survey of traffic conditions between Detroit and Windsor, Ontario, for the purpose of determining whether or not there is sufficient traffic to support a bridge. I believe those are the principal items since the last appearance.

Q. Your previous testimony was confined to the traffic situation, was it not? A. Yes.

Q. In addition to that, have you made a study, in order to meet his Honor's suggestion, that we should ask a hypothetical question, as to all the elements of value? A. Yes, sir, I have.

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Q. What elements did you consider? A. I considered the element of value and easements, of light, air and access acquired from the abutters, the easements acquired from the City for the right to occupy the bed of the street, the cost to reproduce the physical structure and other elements of franchise value than the right to occupy the bed of the street.

Q. Did you make an independent examination of each of those subjects of value? I mean the easement matter, the question of the value of the street space acquired by the City in this proceeding to increase the street capacity? A. I have.

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Q. Did you consult with Mr. E. B. Goodrich in that matter? A. Yes, sir, I did, in that matter.

Q. Who is Mr. Goodrich? A. Mr. Goodrich is consulting engineer of New York City, at the present time consultant to the Regional Plan Committee, operating under the Russell Sage Foundation.

Q. Mr. Goodrich had made a specialty of the Sage Foundation with the City in the study of street traffic conditions? A. Yes, sir, street traffic conditions, city planning, and, in general, the best ways in which to get maximum service from the streets.

3040 Q. And in addition to the cost of street changes, to the amount of the traffic losses obviated thereby? A. I understand so, yes, sir.

Q. Did he make studies in the cities of Cincinnati, Worcester and other cities which have been the subject of publication in the journals of the American Society? A. I believe so, yes, sir.

Q. And your estimate as to the value of the street space to the City, in addition to the estimate of the value of private easements, is derived after consultation with it? A. It was derived after con-

3041 sultation with it, yes.

Q. Have you made further a study of the actual traffic conditions since you last testified? A. I have had a count made, last March, to show the actual number of vehicles passing along 42nd Street between Third Avenue and Park Avenue.

Q. And have you studied the testimony and the traffic statistics that were introduced before the Commission at the time they authorized the removal of the spur? A. Yes, sir, I have.

Q. And you have used the traffic accounts made from other sources included in Mr. Goodrich's publication and that of the chief engineer of the Board

3042 of Estimate and Apportionment? A. I have, yes, sir.

Q. And you have brought your information up to date, have you? A. Yes, sir.

Q. And does it include a personal investigation of the elements of value that you have mentioned? I mean, you have personally made yourself familiar, as far as you could, either directly or through the experts who have been working under your direction in this matter, including Mr. Huntley and Mr. Goodrich? A. Yes, sir, deriving information from Mr. Huntley and Mr. Goodrich.

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Q. And in considering the value of the street space taken by the City, have you had regard to the street improvements and enlargement of traffic capacity in what the City has actually done in the viaduct there at Park Avenue and 42nd Street, and the one around the Grand Central Station? A. I have considered it, yes, sir.

Q. And what has been paid by the City as a fact in order to acquire street facilities in that neighborhood? A. I have considered that, yes, sir.

Q. So as to determine a fair market value, in view of the actual conditions of the property of the Manhattan Elevated Railroad in the street? A. Yes, sir.

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Q. Assuming that the property which the City has taken in this proceeding, including the perpetual easements in and right of control over East 42nd Street and Third Avenue necessary for the perpetual occupation, maintenance and operation of the structures of the Manhattan Railway Company therein known as the 42nd Street spur was as it existed December 6th, 1923, held in the same ownership and operated as a part of the Manhattan Elevated Railway under its perpetual franchises, what immediately prior to the vesting of title in the City was the fair value of the property taken worth in the market viewed not merely with reference to the uses to which it was at the time applied, but with reference to the uses to which it was at the time applied, but with reference to the uses to which it was plainly adapted, that is to say, what was it worth from its availability for valuable purposes having regard to the existing wants of the community.

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Mr. LaMotte: I want to ask a few questions.

3046 *Claimants' Witness—George W. Burpee—Cross.*

Cross examination (preliminary) by Mr. LaMotte:

Q. What do you understand by perpetual easements in and right of control over 42nd Street? A. The right of the railroad company to have its structure in East 42nd Street perpetually.

The Court: And to operate as a railroad.

The Witness: Yes, your Honor.

Q. To do anything else besides operate as a railroad? A. Yes, sir, to have its structure there perpetually.

3047 Q. For railroad purposes only, or for other purposes. A. As I understand it, it has the rights in the street in perpetuity and it also has a right to operate as a railroad.

Q. Do you understand by perpetual easement merely a perpetual easement to maintain and operate that structure for railroad purposes only, is that what you understand by it? A. No, sir, I do not.

Q. How comprehensive have you considered that term to be? A. The term of easements in perpetuity?

3048 Q. Yes, perpetual easements, that you considered in this question? A. I have considered it as giving the railroad the right to the use of the structure in the street in perpetuity, and the space occupied.

Q. For any and all purposes? A. I believe so, yes, sir.

Q. Whether it is railroad or not? A. I believe so, yes, sir.

Q. You have considered that that gave them the right, in so far as these abutting owners are concerned, to absolutely own that space in the street for any purposes, isn't that right? A. I believe that is correct, yes, sir.

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Q. And when you have been called upon to pass a value upon that, that is what you have considered, is that right? A. I believe that is correct, yes, sir.

Q. Now, in estimating the value of what you have considered to be the absolute ownership of this space occupied by the structure, have you determined that upon the basis of the benefit that will result to this abutting property, by giving this space back to them? A. No, sir, not entirely by the benefits that would accrue to the abutting property. That is included under the easements but—

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Mr. LaMotte: Exactly but so far as the easements—

Mr. Nichols: Let him finish his answer.

Q. So far as the easements that they claim to have obtained from the abutting property, so far as that is concerned then, I am to understand that you have estimated their value upon the basis of benefit by the removal of the spur? A. I have measured their value—

Q. Yes, by the benefit that will result to the abutting property by the removal of the spur? A. No, sir; I don't believe I would say exactly that.

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Q. Well, let us see what it is, then? A. I have measured it by the increased value which has resulted from the removal of the spur.

Q. Well, that is the same thing, isn't it? A. Well, it may be. I don't want you to misunderstand.

Q. Now, in addition to that, you have spoken of the value of this space to the City, haven't you? A. Yes, sir.

Q. And you have placed a sum which you think represents the value of that space to the City to

3052 use for occupancy, haven't you? A. Yes, I believe that is correct.

Q. In addition. And then those two figures you have added together, is that right? A. Yes, sir.

Q. Now, in addition to that sum, have you added anything else? A. I have, yes, sir.

Q. What have you added in addition to that; not in amount, but what for? A. I understand. The cost to reproduce the physical structure, less depreciation—

Q. Is that all? A. No, sir. I was about to com-

3053 plete.

Q. Go ahead. A. Also an element of other franchise damages sustained by the Manhattan Railway Company.

Q. In addition to this? A. In addition to that, yes, sir. Those are the four elements.

Mr. LaMotte: My first objection to the witness testifying is that he has included in his estimate the value of assumed easements of light, air and access to 42nd Street upon the basis of what they are worth to the abutting property, which is purely a question for real estate men.

3054 I object to the witness testifying for the further reason that the value of the space, if you could assume anything so ridiculous, to the City for purposes of occupancy is also a question for a real estate man. These elements of value have absolutely nothing to do with this property as a railway, nothing at all. Now so far as I know, this witness has not been qualified to pass upon the value of real estate in the City of New York as such, but he has qualified as a railroad engineer to pass upon railroad property. That is my first objection to this witness answering this question.

My second objection is that the whole question

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is incompetent, irrelevant and immaterial. The question assumed that the railroad company is the owner of easements of light, air and access in 42nd Street which formerly belonged to the abutting owners, separate and apart and in addition to its railway; and that the City takes in this proceeding something other than the railroad, to-wit, easements of light, air and access; and I also object upon the ground that the law prohibits and forbids the City to use this space occupied by the structure in 42nd Street. The title to 42nd Street is held by the City in trust for the public, and

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the law has been settled for hundreds of years, at least since the Act of 1813, that the City has no right to give any rights whatever in the public street, even the right to occupy the street by a bay window is only a license revocable at will.

The Court: To what extent has the City ever granted these privileges to occupy space in the street?

Mr. LaMotte: To what extent?

The Court: Yes.

Mr. LaMotte: Absolute license, removable at will. That was tried in several cases which I cited in my brief.

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The Court: That applied to all the stoop structures.

Mr. LaMotte: It applies to everything.

The Court: But where have they made any basis for this charge that Mr. Nichols refers to, where they have permitted space in the street to be occupied and they make a charge for it, what is the character of those structures?

Mr. Nichols: Those, your Honor, in distinction from our franchise, are revocable permits.

3058 The Court: What is the basis of the charge there?

Mr. Nichols: The basis of the value of the abutting property.

The Court: What is the character of the structure?

Mr. Nichols: All sorts of structures. The bridge at Wanamaker's, and structures that connect buildings that are in common occupation and use; there are a large number of them around the City. There is one down here on Church Street in the
3059 Terminal Building. Then there are pipes that are carried across the streets from one factory to another, overhead structures; some of them resemble very closely our elevated railway. In fact, at Gimbel Brothers, there is a connection between the railroad station and the store.

The Court: And the City charges for that?

Mr. Nichols: The City charges for that.

The Court: That answers it.

Mr. LaMotte: Your Honor certainly will agree with me that the City cannot give any permanent rights in the street.

3060 The Court: I think that is so.

Mr. LaMotte: That anything that the City permits an abutting owner to do with his property is simply a license which must be done away with when it is necessary for the public interest to do away with it. Now that is the settled law. I have case after case on that point cited in my brief.

The Court: There is no question about that line of cases, but I think I shall take this testimony upon their theory of the case.

Mr. Nichols: My friend has discussed the law.

The Court: I do not think I will hear it now. I will allow him to answer the question.

Mr. Nichols: There is no question about a revocable license as to rights in the street just as the Legislature permitted Depew Street to be sold to the City, and the City is now buying it back at millions of dollars.

Mr. LaMotte: Does your Honor overrule my first objection?

The Court: Yes, I overrule them all, and I am going to take it.

Mr. LaMotte: Exception.

Direct examination (continued) by Mr. Nichols: 3062

The Court: Now, answer the question, please.

A. $4,170,000.

Q. In reference to the cross examination, your valuations of the various railroad properties to which you have referred included real estate? A. Real estate was included, yes, sir, in every case.

Q. And you have valued not only the real estate owned by those railroads, but also the real estate taken here representing the private easements by independent studies among other things of the course of values indicated by the City's own valuations in assessing the property? A. I have considered those, yes, sir. 3063

Mr. LaMotte: Don't you think you have cross examined him enough? I object to this cross examination.

The Court: You have covered the point that I had in mind about his qualifications as a real estate expert.

Q. In that question you included all the elements of value which represented the property of the Manhattan Railway Company in connection with the spur; you did not include the separate claim of the Interborough Rapid Transit Company as lessee for damages as distinguished from the value of property. Would you care to state

3064 in the necessity of making alterations at Third Avenue and 42nd Street, you did not include the severance of consequential damages to the Interborough Railway system as a whole of which this spur was a part under the lease of the Manhattan properties to the Interborough Company in evidence. Those two items are not included, is that right? A. They are not, no, sir.

Q. May I ask you as to whether you have given study to the separate damage to the property not taken in this proceeding of the Interborough Com-
3065 pany as the lessee of this property formerly operated as a part of the system of the Interborough Railway?

Mr. LaMotte: Is this an additional claim?

Mr. Nichols: This is only the Interborough claim. We have not had a word on it.

Mr. LaMotte: Is this opening up the case anew?

Mr. Nichols: I want to cover this in five minutes, the claim of the Interborough Company here, and I should think that might be considered extremely brief.

Mr. LaMotte: I do not know what he means.
3066 This is the first information that the Interborough had a claim in this case separate and apart from the Manhattan Railway.

Mr. Nichols: We filed our claim at the institution of this proceeding, and it is part of the record, the claim of the lessee who possessed and used this property under a lease practically in perpetuity. My claim is very brief, very simple and very modest, but I must put in some claim on behalf of the Interborough Company, and I am asking just one question to cover it.

The Court: I knew the Interborough was in here, but I had not heard it intimated that this

was any basis for a claim. Let us hear your question.

Mr. LaMotte: I object to it as incompetent, irrelevant and immaterial. I do not understand it.

The Court: We do not know what it is yet.

Q. What, in your opinion, was, if any, the consequential or actual injury and damage to the Interborough Company, the lessee, of the property taken in this proceeding, in view of the fact that the property taken formed a part of property operated as the Interborough Rapid Transit System of Railroads, and dismembered as a result of this 3068 proceeding?

Mr, LaMotte: I object to the question as incompetent, irrelevant and immaterial.

The Court: Why do you refer to the Interborough at all? The award, if any, is going to be made in one lump sum. What difference does it make? You may agree upon that among yourselves. I understood that was the agreement to be made.

Mr. Nichols: We will endeavor to do that, but I think that I would like to be protected by simply having the witness's estimate of that item to as- 3069 sist us.

Mr. LaMotte: Is this something in addition?

Mr. Nichols: In our stipulation which I shall endeavor to make as I said to your Honor.

Mr. LaMotte: Is this in addition to what he has already testified to?

Mr. Nichols: He has not testified to this at all. It is our property, and we do want to have the opportunity without interruption of putting in evidence as to what the damages of the Interborough's interest is.

The Court: I want to get it clear in my mind

3070 what it is directed at. I thought the testimony you gave earlier in the proceeding covered that consequential end of it.

Mr. Nichols: All that we were then considering was the Manhattan property. You see there are two elements, if I may explain what I have in mind, I may be wrong, but it seems to be clear that in all condemnation proceedings, first the value of the property taken, and then the consequential injuries, if any, as to the balance. This is part of our property. Part of it has been taken.

3071 There may or may not have been consequential damage to the rest of it, but we cannot permit in this case, which is a precedent, a beginning of what we fear will follow, without at least an opportunity to show what comes from tearing apart the Interborough system. This is addressed solely to the Interborough's interest. We take a station which is almost exactly in the same situation with reference to 42nd Street as the 38th Street mentioned today. That was put nine hundred feet on from the 42nd Street station, just as this station was from the Third Avenue station. There the

3072 traffic which was developed was not at the expense of the 34th or 42nd Street stations. Now this is taking away and compelling us to operate this railroad without this valuable traffic.

Q. Have you estimated, in your opinion, what the consequential damages to the Interborough system are, representing injury to the leasehold?

Mr. LaMotte: I object to the question as opening up a new feature of the case. The case was closed, and I must state now if that question is opened in this case, I have got to have time to investigate it and prepare.

The Court: I do not think you need time to investigate.

Mr. LaMotte: I cannot throw away a case like this. This is absolutely a new phase that I have never heard of before.

The Court: Let us hear the answer.

Mr. LaMotte: Exception.

A. No, sir, I have not made any such estimate as to the effects on the Interborough as distinguished from the Manhattan Railway Company.

The Court: Then why did we spend all this time? 3074

Q. Have you estimated the severance value damage, I mean that element only? A. No, sir, I have not estimated the severance damages by themselves. They are included in one of the elements of other franchise values than the easements.

By the Court:

Q. Included in the lump figure you have given? A. Yes, sir, they are included in that lump figure, $4,170,000.

The Court: Why go into this? You have agreed among yourselves to divide the award. Why bother the Court with that. 3075

Mr. Nichols: I will not, but I misunderstood, or the witness misunderstood my question. I wanted to be absolutely sure that there was no lack of diligence on our part.

Q. In other words, in the figure you have given, you have figured the loss that the whole Third Avenue system sustained by reason of the severance of that spur, is that true? A. No, your Honor, that would not be true.

Q. I thought that was what you meant. A. Your understanding, I believe, was justified by the way

3076 *Claimants' Witness—George W. Burpee—Cross.*

I answered that question. I have made an arbitrary minimum allowance to the Manhattan Railway Company for reducing its franchise rights by the taking of the spur, but I have not attempted to estimate any other severance damages that there might be owing to reduced earnings.

By Mr. Nichols:

Q. Then you intend that your answer should be comprehensive of the whole element of damages, the figure that you have given? A. I believe so, yes, sir.

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Mr. Nichols: I wanted to be quite sure of that, and you misunderstood my question. Otherwise I would not have asked you about the Interborough.

Cross examination by Mr. LaMotte:

Q. What is your total estimate? A. $4,170,000.

Q. How much of that was for the value of the easements which the company claimed to have gotten from abutting owners? A. $3,600,000.

Q. How much was it for the value of the space to the City? A. $300,000.

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Q. And what is the difference? That makes $3,900,000. What is the difference between $3,900,000 and $4,170,000? A. Cost to reproduce the physical structure $176,100; other elements of franchise value $100,000, totalling $4,176,900, which I have rounded down to an even $4,170,000.

Q. You have already testified to the cost of reproduction? A. Yes, sir.

Q. Is this the same figure? A. Yes, sir.

Q. Now, this $100,000 for franchise rights, what do you mean by that? A. Those are all the other elements of the franchise value possessed by the

Manhattan. The spur was an integral part of a system of the Manhattan Railway Company's property. It was contributing net earnings, and by its removal the net earnings of the system—

Q. I did not ask you how you got at it. I asked you what that was for. All other rights you said, didn't you? A. Yes, sir.

Q. Take your item $3,600,000, I understood you to say that you arrived at that upon the basis of the increase in the value of the abutting property by the removal of the spur. A. Yes, sir.

Q. And I understood you to say that you col- 3080
laborated with Mr. Huntley? A. I obtained this figure from him through consultations.

Q. Through consultations? A. Yes, sir.

Q. Is this figure the same as his? A. This is his figure.

Q. You adopted his figure? A. Yes, sir, I adopted the figure that was in the evidence.

Q. Now, this $300,000 for the value of the space occupied by the spur at 42nd Street to the City. That you must have figured at some square foot rate? A. No, sir.

Q. How many square feet did you estimate 3081
would go to the City to be used for any purpose? A. I did not estimate it on that basis.

Q. Do you know how many feet? A. No, sir, I do not know at this time.

Q. Did you consult with Mr. Huntley or collaborate with him as to that? A. No, sir.

Q. Did you have any specific use in mind that the City could put that to? A. I beg your pardon?

Q. Did you have any particular or specific use in estimating this figure that you speak of that the City could put that space to upon the removal of the spur? A. Yes, sir, for street uses.

Q. Street uses? A. Yes, sir.

Q. Then this $300,000 is what you consider that space is worth to the City to keep free for street purposes? A. Yes, sir, that is generally true. It might be worth a good deal more.

Q. I understand, and that is what you have figured that $300,000 to be worth to the City or the public to keep open for street purposes; is that right? A. That is the minimum value, yes, sir.

Q. That is the one you have put in there? A. Yes, sir, that is.

Q. Then it must be what you think it is worth?
3083 A. Yes, sir, in exchange between the railway company which now owns it and the city which might acquire it.

Q. Now, let us understand. You mean that you think that is the price which the railroad and the City could agree upon; is that it? A. Exactly.

Q. For turning over that space to the public for street purposes; is that it? A. Yes, sir.

Q. That is, you think that that amount the City would be willing to hand over to the railroad if it tore down the structure and handed that space over to it; is that right? A. Yes, sir, exactly for
3084 that specific space.

Q. And it has nothing to do with the value of the revenue, assuming that the City could get it, the revenue that the City could get from that space for occupying for other than street purposes, you have not considered that? A. No, sir.

Q. Now, I understood that you included in this estimate the cost of the changes at 42nd Street station made necessary by its removal? A. No, sir, I said I did not include that.

Q. Now, you made an estimate of those changes, didn't you? A. Yes, sir, about two years ago.

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Q. And that two years ago was about the time title vested, wasn't it? A. I beg your pardon?

Q. Do you know when title vested in this case? A. December 7, 1923.

Q. That is just about two years, almost? A. Almost, yes, sir.

Q. So that your figures that you gave at that time were prices which were prevailing at about the time that title vested in the City? A. They were probably low prices. I usually try to get my estimate for a purpose of this kind very conservative.

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Q. Now, if you had been called as a witness, you would have testified to those prices at that time, wouldn't you? A. That they were reasonable?

Q. Yes, reasonable, that was your estimate which you made up to give in this case, wasn't it? A. Exactly, for that purpose, that is why I stated that the figures were conservative. I should not have made a construction estimate as low as that.

Q. And that estimate that you made was based upon this plan, look at that plan (shows witness plan) which has been marked in evidence in this case, wasn't it? A. It was, yes, sir.

3087

Q. And you included in that estimate the changes which are shown upon that plan, didn't you? A. I did make an estimate of these changes, yes.

Q. That is what it would have cost at that time to do it? A. Oh, yes, sir, on the basis of reasonably good luck in conducting the work.

Q. Any basis you want to put it, look at that statement I hand, and I ask whether that is your statement? A. Yes, sir, this is.

Q. How much is it? A. It totals $65,078.

Q. What have you included in there for overhead and all the additional expenses? A. I do

3088 not recall at the moment. It is stated in this book, and I think it approximates sixteen per cent. I think I can give it to you.

Q. That is sixteen per cent. of the amount that you estimated it would cost to make the changes as shown upon that plan? A. Sixteen per cent. in addition to pure material and labor costs, yes, sir.

Q. That is sixteen per cent. upon the actual cost of material and labor? A. Upon the cost of material and labor, yes, sir.

Q. And you are certain that that estimate in-
3089 cluded every change that was to be made on this plan which I showed you and which is offered in evidence? A. I intended to cover every element, yes, sir; I believe, it does.

Q. Now, you are the same Mr. Burpee that had previously been called in this case and testified to trends and prospective loss of nickels, you are the same man, aren't you? A. Yes, sir.

Mr. LaMotte: Now I move to strike out the testimony of this witness upon the ground, first, that he is not qualified as a real estate expert; that he has included in this estimate the value of real es-
3090 tate; upon the further ground that his testimony relates to assumed property, to property which the railroad assumes to own separate and apart from its railway, and it is not testimony which relates at all to the value of the property as a railroad. I move to strike it out as incompetent, irrelevant and immaterial. All that the railroad has in 42nd Street is a structure, a right to maintain and operate it for the railroad and for no other purpose. In other words, all it has there is a railroad. And this testimony has no relation whatsoever to valuing the property as a railroad.

The Court: If I finally come to that conclusion,

this testimony will not do you any harm. I will overrule the objection and deny the motion.

Mr. LaMotte: Exception.

Redirect examination by Mr. Nichols:

Q. In estimating the value of the street space acquired under this franchise from the City pursuant to legislative authority of the State, you did not in any way include any portion of the value acquired separately and distinctly from the abutting property owners subsequently, representing the private easements or rights in the street? The 3092
two were distinct in your mind, were they? A. I beg your pardon, but I do not believe I understand that question.

Q. You have given an estimate corresponding to that of Mr. Huntley as the value of the private easements in the street, the easements acquired long after the franchise was granted, and it was discovered that these private rights in the street existed, and that amounted to some $3,600,000. Now, in addition, you have given a separate item of $300,000 representing that right and title in the street that came from the franchise, that coming 3093
from the City, that had nothing to do with the abutting property owners, and which now the City has acquired in this proceeding and enables it to free the street for vehicular traffic, were they separate or not in your mind? A. They were separate.

Q. Absolutely separate things? A. Yes, sir.

Q. Property derived from different ownerships and available for different uses? A. I have treated them separately, yes.

Q. You were asked about your definition of the private easements in the street acquired and purchased by the elevated railroad and deemed to be

3094 proper in the Court's decision. Now, those were perpetual rights in the street, the extent and nature of which were measured by the franchise rights to run the railroad; is that true?

Mr. LaMotte: I object. You are putting the answer right in the witness' mouth.

The Court: Is that so?

Q. Is that so?

Mr. LaMotte: Is what so?

Mr. Nichols: That the private easements were measured in their extent by the railway franchise,

3095 the rights of the railway to use the street.

Mr. LaMotte: I think the witness ought to testify. How did he measure these rights? Do not put the answer in his mouth. You are testifying yourself.

The Court: Let Mr. Burpee answer the question. Do you understand it?

The Witness: Your Honor, I will have to ask to have the question repeated. I am not sure that I understand it. You are referring to the private easements of the Manhattan Railway in the street.

The Court: Light, air and access; did you consider those separate and apart from the right to

3096 occupy the street?

Q. In testifying on cross examination that the private easements represented anything that was in excess of the actual railway occupation, did you have in mind the fact that the rights that were granted were more extensive than those that were used at any one time, that is, they represented the right to run steam engines with smoke and gas and cinders.

Mr. LaMotte: What is the question?

Mr. Nichols: That is a different thing from the rights represented by the railroad as it existed at

the time of taking title by the City, so that the two things are not the same.

Mr. LaMotte: I hate to be objecting all the time, but it seems to me to be loading the record up with a lot of speeches that we are paying for.

Q. (Question repeated.) A. I know that was so; yes, sir.

The Court: You did take it into consideration?

The Witness: Yes, sir.

The Court: You had it in mind when you made your estimate?

The Witness: Yes, sir. 3098

By Mr. LaMotte:

Q. This figure of $3,600,000 is simply the figure that Mr. Huntley made.

The Court: Yes, he said that.

A. It is Mr. Huntley's figure.

Q. You simply repeated that figure as part of your estimate? A. That specific figure, after testing it fully, a test which I stated in direct examination.

By Mr. Nichols:

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Q. Is Mr. Goodrich, the engineer who collaborated with you upon this question of the value of the street space acquired by the City for traffic purposes, present? A. He is, yes, sir.

Mr. Nichols: If you want to question Mr. Goodrich, you may.

Mr. LaMotte: I do not want to question him.

The Court: Now, Mr. Nichols, do you rest?

Mr. Nichols: I rest, of course, with the very distinct understanding that we are going to assume the responsibility of determining how to divide the award.

3100 Mr. LaMotte: Now we are sure that the railroad has rested.

The Court: Yes.

(Recess until 2 P. M.)

AFTER RECESS.

JOHN C. BRACKENRIDGE, recalled for further examination, testified as follows:

Direct examination by Mr. LaMotte:

3101 Q. Mr. Brackenridge, have you examined the map showing certain changes at the 42nd Street station of the Third Avenue El? A. Yes.

Q. Which map is referred to in the certificate of the Transit Commission? A. Yes.

Q. And marked Claimants' Exhibit G, in this proceeding? A. Yes.

Q. Have you also read the order of the Transit Commission and the certificate issued by it? A. Yes.

Q. Have you estimated the cost of making the alterations as shown upon this map or plan of the railroad marked Claimants' Exhibit G?

3102 Mr. Nichols: I object as to estimates of the cost. We have in evidence the exact cost.

A. Yes.

The Court: It may stand.

Mr. Nichols: Exception.

Q. What did you estimate to be the fair cost of making the changes at 42nd as shown upon this map or plan of the railroad's marked Claimants' Exhibit G? A. $56,740.

Q. In your opinion as an expert, were all those changes necessitated by the removal of the spur which was condemned in this proceeding? A. No.

Q. Have you made an estimate of the cost of

doing the work, which, in your opinion, was made necessary by the removal of the spur which was condemned by the City in this proceeding? A. Yes.

Q. How much have you estimated to be the cost of doing the necessary changes, that is, which are necessary, in your opinion? A. $33,799.

Q. Have you made a detailed, or prepared detailed estimate showing exactly how those figures were gotten up? A. Yes.

Q. Is this it (handing witness paper)? A. Yes.

Mr. LaMotte: I offer it in evidence. 3104

Mr. Nichol: Same objection, that the testimony is incompetent, irrelevant and immaterial.

The Court: Frankly, I think the actual cost testified to is better evidence than an estimation. I will take it, however.

(Received in evidence and marked City's Exhibit 61-A.)

The Court: What changes do you claim were rendered necessary by the removal of the spur?

The Witness: The rearrangement of the stairs and the platforms and some rearrangement of the station building which I estimated at about $4,000, where the company estimates it at something like ten. 3105

Mr. Nichols: I offer in evidence the testimony taken before the Public Service Commission and the Transit Commission for the information of the Court, upon the understanding that either party can use any part of it for the purposes of argument or appeal, but that it should not necessarily be considered otherwise a part of the record on appeal.

Mr. LaMotte: I have no objection to that offer, provided it is understood that the City's position

3106 is made clear to this extent that the finding of the Transit Commission is not binding on this Court. In other words, there is no authority given to the Transit Commission to embody a conclusion as to what is necessary as to the removal of this spur that would be binding upon this Court.

(Received in evidence and marked Claimants' Exhibit Y-1.)

Mr. Nichols: Let me add, that we are prepared to prove the necessity of all the expense to which
3107 we have been put, and which we have undergone, as shown by the testimony, and have witnesses to call here, all the men that had charge of the work, and the accounting as well as the representative of the Transit Commission itself who was there daily and has supervised and checked both the work and the expense.

The Court: As I understand it, the City does not seriously contend that the work you did there, Mr. Nichols, did not involve the cost which has been testified to here this morning.

Mr. LaMotte: I don't agree to it, and I don't
3108 deny it. I have no way of checking it up.

The Court: But the contention is that some of the work which you did there, and from which you claim you expended money, was not rendered necessary by the condemnation proceeding here involved.

Mr. LaMotte: More than that. I also claim that if they spent that money, it was an extravagant expenditure; that it could have been done at a great deal less expense, and that these people who are to pay the assessment should not be burdened with any such extravagant work.

3109

Cross examination by Mr. Nichols:

Q. Mr. Brackenridge, you were furnished a copy of the detailed items of cost comprised in four statements, amounting to about thirty pages of items, were you not, dated May 4th, showing the exact expenditures of the Interborough Company on this work, under plan 22941? A. Yes.

Q. And you know, do you not, that the Transit Commission, under whose order the work was done, had a representative engineer there daily, checking the work and the cost? A. No, I did not know that.

3110

Q. You were not familiar with the method under which the Transit Commission checks the Interborough costs? A. I did not know that they had a man there.

Q. You know that we have to account to the Transit Commission as to all our expenditures? A. Yes.

Q. And that our accounts are subject to their supervision? A. Yes.

Q. Now, you have not investigated any of these items so as to specify as to individual items anything which you regard as an extravagance? A. No; there is no way for me to determine what those individual items apply to. I can't segregate them in any way. The only way I have to judge is from estimates that I have made of the cost, and that this was away in excess of any estimate that had been made for the cost of the necessary changes.

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By Mr. LaMotte:

Q. You mean the changes growing from this map, Exhibit G of the railroad? A. Yes.

The Court: That statement will be marked Claimants' Exhibit Z.

3112 Q. Mr. Brackenridge, you were asked by Mr. Nichols whether you had examined this itemized statement furnished to you by the railroad, of the cost of these alterations. Did you take that itemized statement, and with it, examine the work that was done at the station? A. No, there was no way for me to identify from the statement the work—

Q. But you went up there to attempt to do it, didn't you? A. I went up there several times, but the work was in progress all the way from 41st
3113 Street to 43rd Street and Third Avenue.

Q. What work was in progress? A. The work on the elevated structure.

Q. What work on the elevated structure? A. I couldn't tell from this statement whether that work was outside of the lines of 42nd Street, or not.

Q. You mean at the time you made the examination alterations were being made on the road between 41st and 42nd Streets? A. 43rd; a block each side of the station.

Q. A block each side? A. Yes.

Q. That was all going on at one time? A. Yes.

3114 Q. And there was no way in which you could check up what related in that estimate to that within the line of the station or between the other two blocks? A. No, I couldn't check it up.

By Mr. Nichols:

Q. Mr. Brackenridge, I call your attention to this detailed statement of the several items of cost comprising 52 pages of items, and to the fact that opposite each of the items is a voucher or original entry for every payment and that the initials of the men that made the distribution are given on those items, so that it was possible to check every single item of expense as shown on this tabula-

tion, which aggregates $94,795.39. That is so, isn't it? A. Well, I can check it in this way, by getting the men that had initialed those various vouchers and expenses and getting them to go up on the work and point out to me just what that particular voucher covered. 3115

Q. You know some of the men, don't you? A. I know most all of them.

Q. Well, you have seen a lot of them in the room today, haven't you? A. Yes.

Q. Prepared to be cross-examined on that. And you could have seen them at any time that you had this document in your possession that we furnshed you? A. I think so, yes. 3116

Q. Well, now, you have heard the testimony that Mr. Pegram gave specific instructions which he testified were carried out to carefully apportion any part of the work which had not to do with the order and the plan of the Transit Commission, so that it would not be included in reporting to our auditor on the cost of the work; you heard that testimony, didn't you? A. Yes.

Q. You haven't any reason to question that any of the painting or repair work that might have been incidentally done at that time was not separately reported and not included in these items? A. No, except that it seemed like an excessive amount of money to spend for that work; that was all. 3117

Q. Well, that is your opinion? A. That is my opinion.

Q. And you think it was beyond what you estimate? A. Yes.

Mr. Roberts: For the purpose of showing the earnings of the elevated system, as distinguished from the spur which was taken—I refer to the

3118 whole elevated system owned by the Manhattan Railway and leased to the Interborough Company, I should like to offer in evidence the first page of the summary of operations of the Interborough Rapid Transit Company for the year ended June 30th, 1924.

Mr. LaMotte: I object to it upon the ground that it is immaterial and irrelevant.

Mr. Roberts: You admit it is authentic?

Mr. LaMotte: I don't question its authenticity. Upon the ground that we are not condemning the 3119 Manhattan system, we are condemning a small spur which runs from Third Avenue to Park Avenue in 42nd Street, and it makes no difference to this Court what the gross earnings of the Manhattan Railroad, as a system, are, or whether it exceeds the revenues of the Interborough, or is less than the Interborough's—the subway. It is simply encumbering the record with a whole lot of intricate figures which have no materiality in the case at all. What the railroad loses is the spur, and not the system. The question before this Court is, as to the value of the spur, and not the railroad 3120 system.

The Court: I think that is the ultimate question, of course, we are all agreed upon that. The purpose of offering this, Mr. Roberts, I take it, is to show that the system as a whole is a paying system?

Mr. Roberts: Yes, that is it. I want to lay a basis for showing that we have a right to ask the reproduction value of the railroad structure. If I am met, as I have been met with the objections that are now interposed, I want to show that this is a part of a paying railroad system, for what that evidence is worth.

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The Court: I will take it, Mr. LaMotte, and give you an exception.

Mr. LaMotte: Exception.

Mr. Roberts: This is simply a summary of operations of Interborough Rapid Transit Company, just the first page, containing the income for the elevated system.

(Received in evidence and marked Claimant Manhattan Railway Company's Exhibit AA.)

Mr. Nichols: I would like to offer in evidence a page summarizing the itemized elements of the cost of the reconstruction work at Third Avenue and 42nd Street, aggregating $94,795.39.

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The Court: I will take it in connection with Mr. Pegram's testimony.

(Received in evidence and marked Claimants' Exhibit BB.)

Mr. Nichols: And I would ask that the initials which appear in a column in front of the several items on Claimants' Exhibit BB represent the initials of the various heads of departments who were responsible for the accounting and the allocation of the cost, as they appear in the 52 pages of itemized statement to which the summary is attached.

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Mr. Roberts: I would like to state for the record, your Honor, that, starting with April 1st, 1905, and up to and including June 30th, 1922, dividends were paid on Manhattan stock, as a part of the rental, at the rate of seven per cent. per annum; that for the year ended June 30th, 1923, the dividends were paid at the rate of three per cent.; for the year ended June 30th, 1924, at four per cent., and for the year ended June 30th, 1925, at five per

3124 cent.; that the stock outstanding of the Manhattan Railway Company is as follows: In 1903, when the lease was made, $55,200,000 par value; in 1906, $4,800,000 par value additional was issued, making a total of $60,000,000 par value, which has ever since been outstanding. That when the lease was made, in 1903, the consolidated bonds outstanding were $40,670,000 four per cent. per annum, and no sinking fund; that in 1916 $4,523,000 second mortgage bonds were issued, carrying four per cent. interest and no sinking fund. That all of those bonds are
3125 now outstanding.

Mr. LaMotte: You want those to go on the record as having been proved?

Mr. Roberts: Yes.

Mr. LaMotte: My objection to them is that it is immaterial and irrelevant.

The Court: Overruled. I will take it.

Mr. LaMotte: Exception.

JOHN BAUER, recalled for further examination, testified as follows:

Direct examination by Mr. LaMotte:

3126 Q. Doctor, I show you a paper which is marked City's Exhibit No. 62 for Identification, and ask you to state generally what that contains? A. It is a compilation of ticket sales on the Third Avenue line of the elevated division of the Interborough Rapid Transit Company at the Grand Central Station, at the former spur, also at 42nd Street, and Third Avenue, including north and southbound traffic. The final column shows the total ticket sales month by month from January, 1922, until April, 1924, for all of those elevated stations, on 42nd Street, including the Grand Central Sta-

tion; from January 1st, 1922, until the spur was taken down in December, 1923.

Q. These are records taken from reports filed with the Transit Commission by the railroad? A. That is correct.

Mr. LaMotte: I offer it in evidence.

Mr. Nichols: Your Honor, my friend made strenuous objections this morning, as you will recall, to opening up the case again.

Mr. LaMotte: This relates to the same thing.

Mr. Nichols: That certainly is going over the same thing again, and not reopening the case to 3128
bring in new aspects.

The Court: I will give you an opportunity to meet it, if you want to. I will take it.

(Received in evidence and marked City's Exhibit No. 62.)

Q. Now, I show you a paper which is marked City's Exhibit 63 for Identification, and ask you to describe that generally? A. This is a sttatement entitled "I. R. T. elevated ticket sales, Third Avenue line, at 42nd Street and 34th Street." It presents a comparison for two years, 1923 and 1924, by 3129
months. The traffic at 42nd Street, that is, the ticket sales, and the traffic at 34th Street.

Q. Are those figures taken from the reports filed with the Transit Commission by the railroad? A. They were.

Mr. LaMotte: I offer this in evidence.

(Received in evidence and marked City's Exhibit 63.)

Q. Now, Doctor, I show you City's Exhibit 64 for Identification and ask you to describe that paper?

Mr. Roberts: We might simplify things if there is to be no opinion evidence or interpretation of

3130 these, but merely as records, as my friend has said, I don't want to extend the inquiry—

The Court: You will have opportunity on your supplementary memorandum, if you desire, to put in one similarly.

Mr. Nichols: I will agree that anything that my friend puts in is a transcript of the public record.

Mr. LaMotte: There will be no opinion evidence here.

A. This is a tabulation of the ticket sales of the elevated line at 42nd Street and 34th Street sta-
3131 tions, for the 42nd Street, the Grand Central station, during the period while it was in operation. On the top of the statement there is a comparison by years, beginning with the calendar year 1919, and including the year 1924, and then including also the seven months of the year 1925.

Q. That brings it up to date? A. Up to date. On the extreme right side there is a percentage computation showing on each station, that is, at 42nd Street and 34th Street, the percentage increase or decrease of the traffic for the particular year over the preceding period. The underlying reason for making this comparison was to find out whether there was any relationship or comparability in those two stations for a considerable period prior to the present time—or prior to the taking down of the spur. The percentage changes show that the growth of development of traffic at those two stations—

Mr. Nichols: I object, your Honor. It was stated that no opinion was to be given. This opens a very wide field of inquiry.

Mr. LaMotte: I didn't state there would be no opinion. I said there were none expressed in this exhibit.

3133

The Court: Perhaps you had better state what the paper shows; not your conclusions. I think you have already stated what it does contain. What are the lower figures?

The Witness: Well, the lower figures then give the monthly comparison of the same data for the year 1923 and 1924, and the corresponding monthly percentage tables. Then near the bottom the same comparison is carried out, giving a monthly comparison between 1925 and 1924, down to July, 1925, the latest available month.

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The Court: Briefly, what is your contention with respect to this; that this comparison shows that the two stations ran about the same at various times?

The Witness: Yes; prior to the time that the spur was taken down, the traffic changes on the two stations were practically parallel.

The Court: When it went up at Third Avenue and 42nd Street, it went up at 34th Street, and vice versa?

The Witness: That is correct.

The Court: Prior to the removal of the spur?

The Witness: That is correct.

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The Court: What do you claim is indicated after the removal of the spur?

The Witness: After the removal of the spur there was a relative loss at 42nd Street. This was shown practically every month during the year 1924 as compared to 1923. You will observe that all, or practically all of 1923 the months were periods before the spur went down. All of the months in 1924 was after the spur went down—before and after the spur went down. It went down December, 1923. Every month in 1924 on 42nd Street, shows a relative falling behind, a sub-

3136 stantial falling behind of 34th Street, indicating that there was during that period a substantial traffic loss. But in December, 1924, after the improvements at 42nd Street began to go into operation and use, then 42nd Street began to gain back some of its traffic. And this gain has continued throughout the months of 1925, so that in the right hand lower corner, for the months of 1925, compared with 1924, it shows there very clearly that during these months in 1925 42nd Street has gained back very rapidly compared with 34th Street, in-

3137 dicating that the traffic loss during the months when the work of reconstruction was in progress, driving people away, have been gained back, after the work was done and the station finished, so that now the traffic has gotten back to 42nd Street, with no loss to the company.

Mr. LaMotte: I offer this statement in evidence.

Mr. Nichols: Objected to on the ground that it is reopening the case on a matter which counsel says was closed, unless we are permitted to introduce similar testimony.

Mr. LaMotte: When you offer your similar tes-

3138 timony will be time to rule on it.

The Court: I will receive it. I will certainly give you an opportunity to meet it, if you want to.

(Received in evidence and marked City's Exhibit 64.)

Q. I show you City's Exhibit 65 for Identification and ask you to describe that statement? A. This statement is based on the preceding one, and shows the ticket sales at 42nd Street and 34th Street for the seven months ended July 31st, for 1923, 1924 and 1925. In the lower part of the statement the increases and percentage changes are shown. The

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seven months were taken because for 1925 only seven months are available. These were seven months practically after the work at 42nd Street was completed, so the comparison is made to show what the relative traffic for these seven months this year is as compared with the same seven months in 1923 while the spur was still in operation, and including the spur traffic, also with 1924, after the spur was down.

Q. What does it show; the figures? A. It shows that in 1924 there was relatively a big drop at 42nd Street. That was during the period while the work was in progress. It shows, however, that in 1925, the 42nd Street gained back its traffic. In percentage changes in the lower part of the statement, and on the right hand corner, the percentages are given, and the seven months of 1925 and 1923, in 42nd Street, showed a three per cent. increase, whereas on the 34th Street there was eight-tenths or about one per cent. increase.

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Mr. LaMotte: I offer this in evidence.

(Received in evidence and marked City's Exhibit 65.)

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The Court: Let it appear upon the record that counsel had heretofore submitted briefs to the Court upon various phases of the case, and one of the briefs prepared by the Manhattan Railway Company, was prepared upon the assumption that certain figures would be admitted in evidence. Those figures are now in evidence, and that being true, the Court sees no impropriety in counsel examining from both the evidence as it now stands and the figures in the brief.

By Mr. LaMotte:

Q. Have you read the brief, pages 21 to 25 of the brief filed by Messrs. Murray, Roberts & Aldrich as

3142 attorneys for the Manhattan Railway Company and the Equitable Trust Company? A. I have.

Q. Have you examined this Exhibit AA, which has been offered in evidence today? A. I have.

Q. Will you point out to the Court the difference between those two statements? A. There are, in general—

By the Court:

Q. Are you referring to Exhibit AA now, or the brief? A. I am referring to the figures on page
3143 22 of the brief and am comparing those with the figures in Exhibit AA.

Q. When you refer to one or the other, name the exhibit, so that it will be clear? A. So far as the gross revenues are concerned, the figures in the brief and in the exhibit are identical. The revenues from the total Manhattan operation are the same; but when it comes to operating expenses and the so-called income deductions or fixed charges, there is a discrepancy in each group distinguishing operating expenses as such from fixed charges or income deductions. In the operating
3144 expenses, the discrepancy amounts in the aggregate to $321,124.33. The expenses in the brief are understated by that amount as compared with the expenses in Exhibit AA. This understatement comes about in this way: I mean I wanted to give the basis of just how I got that. The statement as given in the exhibit enters among operating expenses a credit for depreciation. This follows a special accounting rule that is followed by the company, and I take it, it is not worth while to go into that, but the result, nevertheless, is that the expense charged for maintenance in operating expenses is substantially less than the actual

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expenses for repairs of the property. Consequently I added back the amount of the credit into the expense so that the expenses will appear on the basis of the actual expenditures for maintenance, but making no additional provision for depreciation. On that basis there is a discrepancy between the two statements, amounting, as I said, to $321,-124.33. Turning next to the fixed charges, I found a very great discrepancy. The only fixed charges above taxes that were included in the brief was the so-called interest charges stated at $1,915,-182.42. By comparing this figure with Exhibit AA, 3146
it appears that this includes interest only on the Manhattan Railway Company's own bonds outstanding, approximately $45,000,000 4 per cent. bonds, so that the only fixed charges included was practically the interest on its own $45,000,000 Four Per Cent. Bonds. This figure, however, does not exactly harmonize. The figure included in the brief appears to be $106,942.42 greater than the interest charges on the Manhattan bonds reported in the exhibit. There is there a discrepancy that does not in the aggregate amount to much, that I was not able to account for. The exhibit then 3147
does not include, except as it may appear in some respects in that discrepancy that I just mentioned, any provision for the Interborough Rapid Transit Company's own bonds and notes issued for elevated improvements. This includes bonds and notes issued for elevated third-tracking, elevated extensions, and the so-called Manhattan power plant improvements. These securities aggregate, as near as I could find out $47,287,089, and the interest and sinking fund charges for the year 1924 on the basis of Exhibit AA, amounted to $2,935,-831.59. None of that is included in the fixed

3148 charges in the brief, although it was interest and sinking fund charges incurred by the Interborough on account of improvements on the elevated which are used in operation, and to which the revenues are included fully in this statement. The brief further neglects to include the interest on the unfunded debt, the interest amounting to $68,726.26 for the year 1924, organization expenses, which the Interborough was compelled to pay in behalf of the Manhattan operation, $50,000 for that same year, miscellaneous deductions, $238,485.27 for the
3149 same year; and on top of all that is the obligation that the Interborough paid during the same year as dividends on the $60,000,000 capital stock, the fixed dividend payment for that year being stated in the Exhibit AA at $2,725,877.

All of these items that I have detailed were included in the exhibit and not in the brief. Might I add just this much, that my detailed comparison here as made was, when I made it, as I made it, was based directly on the Interborough Rapid Transit Company's report for the year ending June 30th, 1924, to its stockholders. I did not at the
3150 time have before me this Exhibit AA as it stands here, but I find by comparison the fixed charges that I have here that I used are equal in amount as given in Exhibit AA. I therefore conclude that the details entering into it were the same, although it may possibly prove that there may not be the exact comparison because I did not have a chance to compare it.

Q. Briefly stated, what is your contention with respect to the difference between the two papers, Exhibit AA and the brief? What difference would it make so far as the Court is concerned? A. That the elevated system, as a whole, for the year 1924,

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was operated by the Interborough Rapid Transit Company at a huge deficit and not at the profit represented in the brief.

By Mr. LaMotte:

Q. What is that deficit? A. The deficit in the Exhibit AA is given as $2,412,798.39 prior to the correction for the depreciation element, which I explained a short time ago.

By the Court:

Q. You mean the exhibit itself shows a deficit or the proof? A. Shows a deficit. Now after that depreciation credit is corrected, then the exhibit shows a deficit for that year amounting to $3,718,285.54.

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By Mr. LaMotte:

Q. And this brief shows a profit of how much? A. This brief shows a profit earned by the Elevated of $2,512,816.49, and the view is that all of the revenues that were earned by the Elevated system from whatever the sources of the investment, were included in the brief, but when it came to the fixed charges, only the interest on the Manhattan Railway Company's own bonds were included and not the vast amount of other fixed charges which the Interborough incurred on account of its own investment in improvements.

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Cross-examination by Mr. Roberts:

Q. Now, from now on just answer my questions. I do not want your explanations and your general narrative. This Interborough interest of which you are speaking, is that interest on Interborough bonds, or Manhattan bonds? A. The amount—

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Q. Answer it yes or no. A. If you will just pardon me, I would like to understand what your question is.

The Court: Can you answer the question?

The Witness: I do not understand the question.

Q. (Question repeated.) A. That is interest on Interborough bonds and notes.

Mr. LaMotte: Let him finish.

The Court: He has finished. He says Interborough bonds and notes.

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The Witness: You were shutting me off before.

Mr. LaMotte: Have you finished your answer?

The Witness: I did.

Q. So far as this Exhibit AA is concerned therefore, it shows in itself that the interest to which you refer is interest on Interborough bonds and notes? A. Yes, sir.

Q. That is all on that. Now in respect to the dividends paid on the Manhattan stock, I understood you to say that those dividends were deducted in the statement included in this brief, and that you considered that an improper deduction. Is that right? I want yes or no.

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The Court: Can you answer that yes or no?

The Witness: The question cannot be answered as given, yes or no, no, sir.

The Court: Then ask another question.

Q. In explaining the difference between the statement in this brief and the statement Exhibit AA, did you not say that in the brief we did not deduct as a proper deduction, the dividends paid on the Manhattan stock? A. I said you did not deduct the dividends on the Manhattan stock.

Q. Did you not also say that you considered

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that it was improper? A. I do not believe I said anything as to propriety.

Q. What comment did you make on our failure to deduct the dividends on the Manhattan stock?

The Court: Or what is your contention in regard to it?

Q. What is your contention in regard to our failure to deduct the dividends on the Manhattan stock in this statement in the brief? A. The only contention is that it was a payment that was actually made by the Interborough and was a fixed charge for the Interborough and was included in the exhibit, and was not included in the brief.

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Q. If that payment on the Manhattan stock as dividends, actually represented the earnings of the Elevated Lines, then it was not a proper deduction, was it, yes or no? A. I cannot answer it yes or no.

Q. Now going back to the operating expenses, I understand that you are an accountant; that is correct, isn't it? A. That is correct.

Q. And you are familiar with these statements, aren't you? A. Right.

Q. I will ask you this question: Is there anything on this statement, Exhibit AA, which would make it improper or unfair for me or any accountant in preparing a statement such as I have in this brief, to fail to deduct the depreciation item to which you referred? A. You want yes or no to that?

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Q. As nearly as possible; I do not want your explanation. A. If you do not want it, I cannot answer the question. It would take half a second for me to explain what I mean. Otherwise I will pass it by.

Q. You say you cannot answer it? A. Not yes or no, no.

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Q. Then I do not want you to answer it. Where did you get your information from concerning this depreciation item? A. From Exhibit AA.

Q. From Exhibit AA? A. Yes, sir.

Q. And you state that it appears from Exhibit AA without any outside information on your part, that the statement in the brief has improperly excluded this depreciation item? A. I did not say that.

Q. What did you say? A. I said that your operating expenses were by $321,000 odd less than

3161 the operating expenses stated in Exhibit AA, if the depreciation credit is added back into operating expenses.

Q. That is your statement? A. Yes; I really think, counsel—

Q. You are now answering my question. A. Yes, I am answering your question. The error is not in the failure to include depreciation for this reason, that the depreciation credit amounts to one million three hundred and five odd dollars, whereas the discrepancy is only $321,000. I assume that somewhere there was an inadvertent error made, aggregating that. I did not allocate it to the de-

3162 preciation item at all.

Q. Are you familiar with the Manhattan situation generally? A. Yes, generally, fairly well, the financial situation.

Q. Do you know the basis on which dividends have been paid on Manhattan stock during the years since the time the readjustment went into operation? A. Yes, generally speaking.

Q. In calculating the earnings of the Elevated Railroad System under the plan of readjustment, does the Interborough Company itself charge against the Elevated earnings the interest on the

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Interborough Bonds to which you have referred? A. Now to make sure that I understand you, you mean the accounting of the Interborough, not under the uniform system of accounts, but under the readjustment plan?

Q. And for the purpose of paying actual dollars and dividends to the Manhattan stockholders? A. I do not recall; I really do not recall whether it has or not.

Cross examination by Mr. Nichols:

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Q. The statement of traffic which you introduced in evidence is confined to the comparison between what two stations? A. 34th Street and 42nd Street.

The Court: On Third Avenue.

The Witness: On Third Avenue.

Q. Now, why did you go down to 34th Street? A. On the grounds of my own general acquaintance with the locality, and on the grounds of my conferences with others who understood the region, and because my earlier statistical comparisons, going back to 1919, showed the close comparability of the two stations; and I based it really, finally, on that last. The statistics furnished the basis of it.

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The Court: You would not consider 42nd Street at Second Avenue a basis of comparison?

The Witness: No, I would not, your Honor, but it may very well be that the statistics would show it. I did not make the comparison. I assumed that it would not be, but I did not make the comparison, but the figures might show comparability.

Q. So that you assumed that a station a few hundred feet away in this 42nd Street district, you assumed would not be a comparison, yes or no?

3166 A. I did not have to assume it. I told you what I did.

Q. Now, you did not investigate the statistics to show whether or not the Second Avenue station on 42nd Street had been a proper basis of comparison of similar trends and conditions with 42nd Street and Third Avenue, you did not investigate? A. I did not investigate.

Q. You did not? A. I did not.

Q. When you went down to 34th Street, don't you know that 34th Street has got a 34th Street
3167 Association that is distinct in its history and developments and conditions from 42nd Street? A. I do not know that. I do not believe it is.

Q. You do not know that they have a separate association down there? A. Yes, I know that is true.

Q. And you know there is one in 42nd Street which got this spur removed. You know that? A. Yes, I know that.

Q. So that their interests are represented by different commercial bodies? A. But that does not show—

Q. That is true, isn't it? I am just asking you a
3168 question. Do you know that? A. That there are different organizations, I know that.

Q. We will stop there. Now you know that the 34th Street station has been affected by the discontinuance of a ferry down there? A. I do not believe that it has been affected by the discontinuance. The figures do not show it.

Q. You think that the discontinuance of the ferry did not affect it?

The Court: When was that ferry discontinued?

Q. Do you know? A. I do not recall.

The Court: Cannot you agree upon it? Do you know, Mr. LaMotte?

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Mr. LaMotte: I have not the slightest idea.

Mr. Nichols: All I want to show is that he does not know anything about it. That is sufficient for me.

Q. Now, would you be surprised to know that the ratio of traffic on the 42nd Street Second Avenue station and the 42nd Street Third Avenue station had remained within two per cent. for the four years preceding, I mean the ratio had been just the same for several years preceding the taking down of the spur? A. Do you mean the percentage changes of traffic on the 42nd Street Second 3170
Avenue moved practically parallel with the Third Avenue?

Q. Yes? A. I did not know it. I did not go into it.

Q. Didn't you know that was brought out before the Transit Commission where you were a witness? A. If I did, I have forgotten about it, and I did not bring those figures in here.

Q. You did not make any investigation of this neighboring station on 42nd Street at all? A. No, I did not.

Q. Now take the last month that the spur was 3171
operated, that was November, 1923. Now subject to correction will you assume that this is, like your copies, a correct transcript of the statistics of traffic?

Mr. Nichols: I will have this marked for identification unless you admit it.

The Witness: How can I admit it. I will assume it.

The Court: Go right ahead.

Q. Now we will take the last month, November, 1923. Here is Second Avenue. The traffic in that month 203,876. Now take in November of 1924,

3172 and it is 216,248. Now that would show you about the ten or eleven per cent. trend that Mr. Burpee testified to, about ten per cent. Take the last month that the spur was operated? A. You are now speaking of the Second Avenue?

Q. Yes. A. From any two months, there is no trend shown whatever. I would want those figures and analyze them. No two months' comparison shows trend.

Q. I am not comparing October with November or with September, where a seasonal difference
3173 might be found. I am comparing the same months on the same station, one month the last month before the spur was taken down, and the other month just one year later. A. That is on Second Avenue?

Q. That is on Second Avenue? A. Now let us assume that there was such an increase.

Q. Ten or eleven per cent.

Mr. LaMotte: Are you through?

The Witness: Yes, so far as that question is concerned, but that does not of course show—

Q. You said you were through. Now Mr. LaMotte said, why not take a year. We will take
3174 the first year before the spur was taken down at Second Avenue, and see what the trend was on that locality. Now the last fiscal year was that ending in June, 1923, and the total of the traffic at the Second Avenue station at 42nd Street, 2,147,324?

Mr. LaMotte: There is no proof of those figures.

The Court: He is assuming the figures are correct.

Q. Now we will take the next year? It was 2,466,830, an increase of 17 per cent. on Second Avenue.

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The Court: Over what?

Mr. Nichols: Over the year before. That shows a normal trend there.

Q. Now let us take the last year, 2,662,286.

The Court: That is 1925, or 1924?

Q. 1925, right up to date as far as fiscal years will permit. Now when we compare this last year, which begins in July, 1924, long after the spur was taken down, we compare that with the year ending June 30th, 1923, which was before the spur was taken down, we eliminate any disturbing conditions, don't we?

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Mr. LaMotte: When were the turnstiles installed?

Mr. Nichols: The turnstiles were installed some time or other.

Mr. LaMotte: What year? That may explain the seventeen per cent.

Q. Now didn't you testify before the Judge here that you checked up with Mr. Bruce, whose preliminary suggestion was that there was a difference between the number of tickets in the box and the number of passengers actually counted going east on Second Avenue, and you and Mr. Bruce agreed

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that there wasn't any such difference. Didn't you testify to that? A. Any such difference as that.

Q. Between the number of tickets dropped in the box and the number of people actually going east after having passed that box on the spur? A. Do you mean we agreed that there was no difference?

Q. Did you say you pointed out to Mr. Bruce that there wasn't any such difference between the people actually using the spur and the number of tickets in the box, yes or no? A. No.

Q. Just to test your recollection, because it is in the record? A. Sure, it is in the record.

3178 Q. It is in the record just the other way. So that you still stick to the turnstile? A. Stick to what? That there was a difference between turnstile readings and ticket sales?

Q. Did you testify that the record taken only for a few days was wholly inconclusive and it would take a month to make it so that you would accept it? A. A careful investigation was made after that preliminary survey and a basis of fact was established so that there was a differential established that has been recognized in my basic
3179 computations that went into this case and there isn't anything to that item.

Q. A differential established. Do you mean to say that there is a constant factor of difference between the turnstile records and the ticket sales, yes or no?

Mr. LaMotte: Let him answer the question.

The Court: Can you answer it yes or no?

Q. Is there? A. Of course that question cannot be answered yes or no.

Q. Don't you recognize that the number of tickets sold must correspond to the turnstile records or
3180 the tickets in the box? A. For any station? Why, of course not.

Q. I mean, in general? A. For the system as a whole, of course, but not for any given station. There may be a constant differential or a relatively constant differential.

Q. Have you not testified that you could not determine that in respect to any one station on the count of one month, did you or did you not? A. Certainly, but a count was made.

Q. A count was made for one month? A. No, for a period that at the time seemed to myself

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representing the City and the Transit Commission and the Interborough.

Q. You now say that that appeared to you satisfactory. Do you recall that in this case you have testified that it was wholly unsatisfactory? A. I do not recall that I testified any such way in this case.

Q. That tests your memory. Now we will go back and leave the turnstile in the record just as it stands, and we will compare the figures before the spur was taken down for the year when there was no disturbing element as far as the spur was concerned, or the work going on at Third Avenue, and then we will take the last fiscal year, ending June of this year, and the figures that I have read show an increase of twenty-four per cent. on the Second Avenue and Third Avenue stations. Does that correspond to Mr. Burpee's statement of the normal trend as being about eleven per cent.? A. Whatever these figures show, let us assume that; but that does not show anything as to eleven per cent. on the Grand Central Station of the spur, no, sir.

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Q. It does show eleven per cent. over there at Second and Third Avenue, and do you know any reason, now I will give you a chance to tell, do you know of any reason why the Second Avenue and 42nd Street station traffic trend is not a proper and the most immediate and best basis of comparison with the normal trend to apply to Third Avenue? A. Now let us be perfectly clear. When you are taking 42nd Street trend, you are not taking the Grand Central trend prior to the demolition of the spur, are you?

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Q. I am talking about the trend under comparable conditions?

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Mr. LaMotte: Are you talking about 42nd Street and Third Avenue?

The Court: 42nd Street and Third Avenue, and 42nd Street and Second Avenue.

Q. Isn't the traffic at 42nd Street and Second Avenue the proper yardstick to determine it by? A. You have brought in here trend, and the testimony of trend was directed to the Grand Central Station. Now I want to get perfectly clear that I am not admitting here that the trend at 42nd Street and Second Avenue or even 42nd Street and

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Third Avenue, has anything to do with the trend at Grand Central prior to the taking down of the spur. It did not.

The Court: Consider the trend after the spur was taken down and compare the two stations, 42nd Street and Third Avenue, and 42nd Street and Second Avenue.

Mr. LaMotte: We have not got the figures in evidence.

The Witness: I cannot do that.

The Court: Would you say that both of those stations would be comparable in their increase or

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decrease in traffic under normal conditions?

The Witness: Frankly, Judge, I cannot answer it because I have not—

The Court: Taking into consideration Second Avenue and 42nd Street.

The Witness: I have not studied the traffic on the Second Avenue Line.

The Court: He has said that before, I think.

Q. Now, what is the next station south of 42nd Street and Third Avenue? A. On the Elevated Line?

Q. Yes. A. Third Avenue and 34th Street, the next station south from 42nd Street?

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Q. Yes. A. 34th Street.

Q. Now, what is the next station north? A. I am not certain; I am really not certain.

Q. You do not know? A. I am really not certain.

Q. Why didn't you take 47th Street, which is so much nearer than 34th Street? A. I am not admitting anything about nearer or anything of that sort. I took the two stations which, from my own knowledge of conditions, those two stations, because I had gone through those two stations repeatedly, I thought the conditions surrounding them were fairly comparable by a proper statistical investigation. I found that there had been similar changes for a period of years. That is the reason I took the stations, and I did not take a lot of others. I took them only to simplify comparison, and whatever other comparisons may be, I do not know.

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Q. But you did not try the station at Sixth Avenue and 42nd Street? A. No.

Mr. Nichols: Now, I will offer in evidence a statement showing the passenger traffic by months, 42nd Street station on the Third Avenue Line, the Grand Central Station, Third Avenue Line, and then the total of the two Third Avenue stations at 42nd Street, and then in a parallel column the traffic at the Second Avenue line month by month from July, 1921, down to the end of the fiscal year 1925.

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Mr. LaMotte: I do not object to those upon the ground that they have not been proven if you will give me an opportunity to examine them.

(Received in evidence and marked Claimants' Exhibit CC.)

3190 Mr. Nichols: I offer in evidence statement showing passenger traffic by months from July, 1921, down to and including June, 1925, and by the fiscal years of the 34th Street station on the Third Avenue Line, the 47th Street station on the Third Avenue Line, the 34th Street station on the Second Avenue Line, and the 50th Street station on the Second Avenue Line, being the stations next adjoining to 42nd Street.

(Received in evidence and marked Claimants' Exhibit DD.)

3191 Mr. LaMotte: Now, if there is anything wrong with these, I would like to correct them.

The Court: They are subject to correction.

Q. I show you these two exhibits marked CC and DD, in your opinion do those figures form a basis for a proper comparison for the course of traffic? A. No; for a proper comparison, I think the stations ought to go back further so as to show for a longer period prior to taking down the spur what the relative changes were at those several stations compared with 42nd Street. In my statement that I prepared, Exhibit 64, I carried it back 3192 to 1919, and it shows a parallel development. I think that these statements ought to be carried back a similar period. My surmise is, I do not know whether it is so or not, that these stations probably were increasing and developing at a more rapid ratio because they had been previously underdeveloped than 42nd Street, so that I say simply that the comparison ought to go back further to include two or three more years.

Mr. LaMotte: I offer in evidence a photograph of the station of the Third Avenue Elevated road at 42nd Street, looking east.

The Court: Taken what date?

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Mr. LaMotte: Taken after the spur was down but before the station improvements were made.

(Received in evidence and marked City's Exhibit 66.)

Mr. LaMotte: Now, I offer in evidence a photograph of the same side of this station, that is, looking east from a point west, after the station improvements were made.

(Received in evidence and marked City's Exhibit 67.)

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Mr. LaMotte: Now I offer in evidence a photograph looking west from east of this station, after the stairway at the northeast corner was constructed.

(Received in evidence and marked City's Exhibit 68.)

Mr. LaMotte: Now as to the title to the bed of 42nd Street, these are the facts as I have ascertained them: there was a proceeding instituted to acquire title to the land in the bed of 42nd Street from Third Avenue to Bloomingdale Road under the Street Opening Act of 1813. The report of the

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Commissioners in that proceeding was dated March 30, 1833, confirmed April 18, 1833, and filed April 19, 1833. Now if you can agree to those facts, that is all I want, that that proceeding was instituted under the Street Opening Act of 1813, to acquire title to this portion of 42nd Street for street purposes.

The Court: Let that statement stand on the record as facts subject to any correction that either side wishes to make.

Mr. LaMotte: We would like to put in evidence the date that the turnstiles were installed in the

3196 stations which are referred to in these last tabulated statements of the company, Exhibits CC and DD.

Mr. Nichols: We will stipulate them.

Mr. McCollom: The Central Union Trust Company of New York, a corporation organized and existing under the Banking Laws of the State of New York, is the present trustee under a mortgage known as Consolidated Mortgage, made by Manhattan Railway Company and Metropolitan Elevated Railway Company and Central Trust Company as trustee, dated February 26, 1890. The original of said mortgage is in the files of the Central Union Trust Company and a true copy is produced herewith and requested to be marked Central Union Trust Company's Exhibit A. I offer it in evidence for that purpose.

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(Received in evidence and marked "Central Union Trust Company's Exhibit A.)

Mr. McCollom: The said Consolidated Mortgage was duly recorded in the office of the Register of the County of New York, in Liber 2538 of Mortgages, page 157, on the 26th day of February, 1890, and still remains unsatisfied of record.

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The Central Union Trust Company of New York is also the present trustee under a supplemental indenture, dated June 13, 1899, being an indenture supplemental to the said consolidated mortgage which has just been introduced in evidence, and said supplemental indenture having been made by the Manhattan Railway Company to the Central Trust Company as trustee. The said supplemental indenture was duly recorded in the office of the Register of the County of New York, in Block

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Series Liber 7 of General Mortgages, page 265, on the 12th day of July, 1899, at 12 o'clock noon. The original of said supplemental indenture is in the files of the Central Union Trust Company and a true copy thereof is produced herewith and requested to be marked Central Trust Company Exhibit B. I offer it in evidence for that purpose.

(Received in evidence and marked Central Union Trust Company's Exhibit B.)

Mr. McCollom: Under and pursuant to the provisions of said consolidated mortgage and supplemental indenture, the trustee duly authenticated and delivered, and there were duly issued and are now duly outstanding, $40,670,000 principal amount of bonds secured by said consolidated mortgage and supplemental indenture.

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It is further stipulated, subject to correction, that interest upon all the outstanding bonds has been paid up to and including the installment which matured on April 1st, 1925, the interest on said bonds being at the rate of four per cent. per annum, payable semi-annually on the first days of April and October in each year.

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Mr. Roberts: The Manhattan Railway Company made and delivered a second mortgage, a copy of which is offered in evidence with the request that it be marked Equitable Trust Company of New York, Exhibit A, under which mortgage there are oustanding $4,523,000 of bonds on which the interest has been paid to the last interest date.

(Received in evidence and marked Equitable Trust Company's Exhibit A.)

Claimant Rests.

City Rests.

The Court: Proceedings closed, with the exception that any other proof may go in by stipulation.

3202

Hearing before Mr. Justice James O'Malley, at the Appellate Division Court House, Wednesday, May 25th, 1927, pursuant to notice, for the purpose of fixing a day for the hearing of objections as to awards and assessments in the above entitled matter.

Appearances: Hon. George P. Nicholson, Corporation Counsel, for the City, by Mr. L. Howell LaMotte. Page & Page, by Mr. William H. Page, for Objectors Hotel Commodore (Bowman Biltmore Hotels Corporation); Corn Exchange Bank;
3203 Hotel Biltmore (Bowman Biltmore Hotels Corporation); Hotel Belmont (B. L. M. Bates Corporation); Hotel Murray Hill (Bates Bowman Corporation); Guaranty Trust Company of New York, as substituted Trustee of the Est. of John Curry, deceased; J. Chr. G. Hupfel Co., Inc.; The Bowery Savings Bank; Rogers Peet Company; Princeton Club of N. Y.; Fritz G. Schmidt; Office Realty Corporation; William Volk; 202-204 East 42nd Street Corporation; Vanderbilt Avenue Building Corporation; Centerminal Corporation; F. & S. Rockaway Restaurant, Inc.; [illegible] Tishman & Sons, Inc.,
3304 Frederick Brown; [illegible] Ford; Anahma Realty Corporation; D. A. Schulte, Inc.; The Oceanic Investing Company; Borden Realty Corporation; R-W Realty Company, Inc.; The Trustees of the Est. of James Kelley, deceased; Childs Company, J. Chr. G. Hupfel; J. Homer Cudmore; Alexander Taylor & Co., Inc.; Henry Hof; 140 East 27th St. Corp.; Carbide & Carbon Realty Co., Inc. Middlebrook & Sincerbeaux, by Mr. T. H. Baskerville, for the Manhattan Storage & Warehouse Company. Frank M. York, Esq., by Mr. H. G. Smith, for Alice McDonald and John J. O'Brien, owners of 153 East 42nd Street. E. W. Van Voorhis, Esq., for the

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Pershing Square Building Corporation. Parsons, Closson & McIlvaine, by Mr. Wright, for Cooper Union for Advancement of Science and Art. Alexander S. Lyman, Esq., for New York Central Railroad Company, New York & Harlem Railroad Company, and New York City Realty & Terminal Corporation. James L. Quackenbush, Esq., by Mr. Nichols, for the Interborough Rapid Transit Company. Stoddard & Mark, by Mr. L. Lane, for the Athens Hotel Company. W. H. Reeves, Esq., for 145 East 41st Street Corporation; The National City Realty Corporation, and the National City Bank of New York. Messrs. Shearman & Sterling, by Mr. W. K. Earl, for Robert Walton Goelet. Edward T. Doyle, Esq., for Real Estate Board Building Corporation, 12-14 East 41st Street.

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Mr. Page: I represent thirty-three property owners who are assessed for half a million dollars, or something over forty per cent.

Mr. LaMotte: The Corporation Counsel wishes to report to Your Honor that the tentative decree as to awards for damages and assessments for benefit was filed with the Clerk of the County of New York for the time required by law and notice of such filing and to file objections hereto was published as by law required and that within the statutory time, the following objections have been filed and received.

3207

Objections of the George Ehret Realty Corporation by Messrs. Skinner & Bermant.

Objections of the Interborough Rapid Transit Company by James L. Quackenbush.

Objections of the Estate of Henry Riffel and Emelia Riffel, by Messrs. Rees and Rees.

Objections of Canadian Realty Corporation by James M. Vincent, Attorney.

3208 Objections of Robert Walton Goelet by Messrs. Shearman & Sterling.

Objections of the New York City Realty Corporation, by Mr. Gordon S. Rentschler, Vice-President.

Objections of the New York City Bank, by Mr. G. E. Gregory, Vice-President.

Objections of George Ehret, *et al.* by Messrs. Skinner & Bermant.

Objections of the New York Central Railroad Company, New York & Harlem Railroad Company and New York City Realty & Terminal Corporation, by Mr. Alexander S. Lyman.

3209 Objections of Athens Hotel Company by Messrs. Stoddard & Mark.

Objections of various property owners by Messrs. Brown, Wheelock, Harris, Vought & Co., Inc., as agents.

Objections of Benjamin Rosenthal, Liggett's-Winchester-Ley Realty Corporation, 41st Street and Park Avenue Corporation, American Railway Express Company, and Carthage Realty Corporation, by Messrs. Talley & Lamb.

Objections of Schaivetz Co., Inc. by Messrs. Page & Page.

3210 Objections of 145 East 41st Street Corporation by Mr. Edison Lewis.

Objections of Ogden Goelet Estate, by Mr. Edward W. Murphy.

Objections of Estate of Robert B. Dula, by Mr. Edward W. Murphy.

Objections of the Equitable Trust Company of New York, as Trustee, by Mr. George W. Murray.

Objections of the Manhattan Railway Company by Messrs. Murray, Aldrich & Roberts.

Objections of the Manhattan Storage & Warehouse Company, by Messrs. Middlebrook & Sincerbeaux.

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Objections of the Pershing Square Building Corporation by Mr. Edward W. Van Voorhis.

Objection of Property Owners as to the Assessment, by Mr. Walter H. Martin, Attorney.

Objection of the Spies Estate, by Messrs. Deering & Deering.

Objections of Hermine Milch, by Messrs. Cohen, Cole & Weiss.

Objections of Arthur Perry, Jr., and Architect's Office, Inc., by Messrs. Talley & Lamb.

Objections of 8 East 45th Street, by Messrs. Brown, Wheelock, Harris, Vought & Co., Inc.

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Objections of 202 East 41st Street, 633 and 635 Third Avenue by Messrs. Johnston & Messler, Attorneys.

Objections of The City of New York.

Mr. LaMotte: On behalf of the Corporation Counsel I would like your Honor to set the matter down for some day between June 6th and June 10th.

The Court: That would be impossible. I will put the matter over until 10:30 A. M. Thursday, June 16th.

(Hearing adjourned until Thursday, June 16th, at 10:30 A. M.)

3213

Hearing before Mr. Justice James O'Malley, at the Appellate Division Court House, Thursday, June 16th, 1927, pursuant to adjournment, for the purpose of fixing a day for the hearing of objections as to awards and assessments in the above entitled matter.

Appearances: Hon. George P. Nicholson, Corporation Counsel for the City, by Mr. L. Howell LaMotte. Messrs. Page & Page, by Mr. William H.

3214 Page, for Objectors Hotel Commodore (Bowman Biltmore Hotels Corporation); Corn Exchange Bank; Hotel Biltmore (Bowman Biltmore Hotels Corporation); Hotel Belmont (B. L. M. Bates Corporation); Hotel Murray Hill (Bates Bowman Corporation); Guaranty Trust Company of New York, as substituted Trustee of the Est. of John Curry, deceased; C. Chr. G. Hupfel Co., Inc.; The Bowery Savings Bank; Rogers Peet Company; Princeton Club of N. Y.; Fritz G. Schmidt; Office Realty Corporation; William Volk; 202-204 East 42nd Street
3215 Corporation; Vanderbilt Avenue Building Corporation; Centerminal Corporation; F. & S. Rockaway Restaurant, Inc.; Julius Tishman & Sons, Inc.; Frederick Brown; James B. Ford; Anahma Realty Corporation; D. A. Schulte, Inc.; The Oceanic Investing Company; Borden Realty Corporation; R-W Realty Company, Inc.; The Trustees of the Est. of James Kelley, deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Alexander Taylor & Co., Inc.; Henry Hof; 140 East 27th St. Corp.; Carbide & Carbon Realty Co., Inc. Messrs. Middlebrook & Sincerbeaux, by Mr. T. W. Baskerville, for the Manhattan Storage & Warehouse
3216 Company. Mr. Frank M. York, by Mr. H. G. Smith, for Alice McDonald and John J. O'Brien, owners of 153 East 42nd Street. Mr. E. W. Van Voorhis, for the Pershing Square Building Corporation. Messrs. Parsons, Closson & McIlvaine, by Mr. Wright for Cooper Union for the Advancement of Science and Art. Mr. Alexander S. Lyman, for New York Central Railroad Company, New York & Harlem Railroad Company, and New York City Realty & Terminal Corporation. Mr. James L. Quackenbush, by Mr. Nichols, for the Interborough Rapid Transit Company. Messrs. Stoddard & Mark, by Mr. L. Lane, for the Athens Hotel Company. Mr.

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W. H. Reeves, for 145 East 41st Street Corporation; The National City Realty Corporation, and the National City Bank of New York. Messrs. Shearman & Sterling, by Mr. Howe, for Robert Walton Goelet. Mr. Edward T. Doyle, for Real Estate Board Building Corporation, 12-14 East 41st Street. Mr. Edward W. Murphy, by Mr. Francis P. O'Connor for the Ogden Goelet Estate, and for the Estate of Robert B. Dula.

The Court: What are the wishes of counsel?

Mr. O'Connor: If the Court please, there is a petition before the Board of Estimate and Apportionment to invite some of the owners that are in arrears of assessment for the relief of the assessment on the ground that either the City of New York, or the Borough of Manhattan or both should bear a part of this cost and expense, which is so heavily assessed against the immediate owners, as to be practically confiscatory. The objections have been referred to the Chief Engineer and no report has been made by the Chief Engineer as yet. I understand that the Board of Estimate and Apportionment holds its last meeting today until September 29th. It has been the invariable custom of the courts in my experience, which extends over quite a number of years, that where an objection is raised the Board of Estimate and Apportionment has to either approve or reject it, and it is held in abeyance until the Board of Estimate and Apportionment acts. I respectfully request that that be done in this case, and ask your Honor for an adjournment until about the 15th of October, so as to give the Chief Engineer the necessary time to appear and act.

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The Court: Who do you represent?

Mr. O'Connor: The Robert B. Dula Estate and

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The Ogden Goelet Estate. We have about $35,000 worth of assessments.

Mr. Nichols: On behalf of the Manhattan Railway Company we should like to see a final decree entered promptly.

Mr. Maas: Your Honor, so far as I am concerned it is in regard to any delay which might postpone the advancement of our appeal. Your Honor recognizes this embraces some rather novel practices of law and we ought to have a precedent.

The Court: What is the attitude of the City.

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Mr. LaMotte: The City is anxious to thresh the matter out. As I understand, it is very difficult to get a final decree out before the 1st of October, due to the vacation of the city employees that is now coming along, beginning July 1st. If the matter could be disposed of promptly now, I should be in favor of proceeding and making as much progress as possible.

The Court: We are concerned in the first instance with the awards, are we not?

Mr. LaMotte: The decree of the award cannot be entered.

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The Court: I assume there can be no question about the awards, that they are to stand, as they are.

Mr. Nichols: I appreciate that would be the condition, reserving the matter of the appeals, which is what I would like to facilitate at the earliest proper moment, so that we can proceed as speedily as possible with the appeals without being compelled to wait for the questions relating to the assessments.

Mr. LaMotte: If we could persuade your Honor to change them we would be very glad to try.

The Court: That is impossible. I made as good a disposition of it as I could. Then the awards

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will be closed. Now, on the matter of the assessment, if that is held until October, will that hold up the proceeding?

Mr. LaMotte: It will hold up the whole thing.

Mr. Maas: We feel the whole situation would be better off if we had this delay. It may avoid the necessity of conflict in the way of appeal. If the Board of Estimate and Apportionment can be reached and the City will assume some of this burden, many of the property owners will not find it worthy of appeal.

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Mr. LaMotte: There will be an appeal. Before we can make up a final decree, the Charter provides the costs must be taxed and included in the award and assessment. It will at least take two weeks to make it up, and ten days' notice is required to be published in the City Record. That will bring it practically to the end of July. I do not suppose your Honor will be here in August, if we do make up a report.

The Court: We will let it go over if there is no objection.

Mr. LaMotte: I do not think that will delay it myself.

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Mr. O'Connor: The first meeting of the Board of Estimate is September 29th.

The Court: It will be impossible to have a hearing of this matter before the third week in October as I hold court the first two weeks.

Mr. O'Connor: Probably the matter will be disposed of by the Board of Estimate before that time.

The Court: Between the 19th and 29th of October I can set a date.

(Adjourned to Thursday, October 20th, 1927, at 10:30 A. M.)

3226

Hearing before Mr. Justice James O'Malley, at the Appellate Division Court House, Thursday, October 20th, 1927, pursuant to adjournment, for the purpose of fixing a day for the hearing of objections as to awards and assessments in the above entitled matter.

Appearances: Hon. George P. Nicholson, Corporation Counsel, for the City, by Mr. L. Howell LaMotte. Messrs. Page & Page, by Mr. William H. Page, for Objectors; Hotel Commodore (Bowman Biltmore Hotels Corporation); Corn Exchange

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Bank; Hotel Biltmore (Bowman Biltmore Hotels Corporation); Hotel Belmont (B. L. M. Bates Corporation); Hotel Murray Hill (Bates Bowman Corporation); Guaranty Trust Company of New York, as substituted Trustee of the Est. of John Curry, Deceased; C. Chr. G. Hupfel Co., Inc.; The Bowery Savings Bank; Rogers Peet Company; Princeton Club of N. Y.; Fritz G. Schmidt; Office Realty Corporation; William Volk; 202-204 East 42nd Street Corporation; Vanderbilt Avenue Building Corporation; Centerminal Corporation; F. & S. Rockaway Restaurant, Inc.; Julius Tishman

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& Sons, Inc.; Frederick Brown; James B. Ford; Anahma Realty Corporation; D. A. Schulte, Inc.; The Oceanic Investing Company; Borden Realty Corporation; R-W Realty Company, Inc.; The Trustees of the Est. of James Kelley, deceased; Childs Company; J. Chr. G. Hupfel; J. Homer Cudmore; Alexander Taylor & Co., Inc.; Henry Hof; 140 East 27th St. Corp.; Carbide & Carbon Realty Co., Inc. Messrs. Parsons, Closson & McIlvaine, by Mr. A. S. Wright, for Cooper Union for the Advancement of Science and Art. Messrs. Talley & Lamb, for Benjamin Rosenthal and others, by Hon. Alfred J. Talley. Mr. James L. Quackenbush, for the Interborough Rapid Transit Com-

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pany, by Mr. Nichols. Mr. Alexander S. Lyman, for New York Central Railroad Company, New York & Harlem Railroad Company, and New York City Realty & Terminal Corporation. Mr. E. W. Van Voorhis, for the Pershing Square Building Corporation. Messrs. Middlebrook & Sincerbeaux, for the Manhattan Storage & Warehouse Company. Messrs. Stoddard & Mark, for the Athens Hotel Company. Mr. Frank M. York, for Alice McDonald & John J. O'Brien, Owners of 153 East 42nd Street. Mr. W. H. Reeves, for 145 East 41st Street Corporation; The National City Realty Corporation, and

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the National City Bank of New York. Messrs. Shearman & Sterling, for Robert Walton Goelet. Mr. Edward T. Doyle, for Real Estate Board Building Corporation, 12-14 East 41st Street. Mr. Edward W. Murphy, for the Ogden Goelet Estate, and for the Estate of Robert B. Dula.

The Court: What is the situation this morning.

Mr. LaMotte: When we were before your Honor last, the Corporation Counsel stated that an application had been made to the Board of Estimate for relief or a change of the method of assessment. Since then the petition has been with-

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drawn and there is now no application before the Board.

Mr. Page: I would like to ask permission to file some objections for the Childs Company, to which the Corporation Counsel has given his consent.

The Court: Have you any objection to that, Mr. LaMotte.

Mr. LaMotte: They will be filed.

Mr. Page: As far as the situation before your Honor is concerned, at the last hearing your Honor said that everything, as I understood it, would be held in abeyance until the date of the adjournment which is today. I have a few observations I would

3232 like to make and a brief I should like to file with exceptions, on the assumption that the decision in regard to the award was regarded by your Honor as a matter still in abeyance. I will not occupy but a very few minutes of your Honor's time, if your Honor has time to hear me.

The Court: What is the substance of it?

Mr. Page: The substance is this: In 1819, with the Dartmouth College case a new horizon took place with regard to the relationship between corporations and the State,—and following that deci-
3233 sion came legislation in all the States, particularly New York, holding that Charters could be changed. Then came various cases after that and later on came the necessity in this city for the installation and building of elevated railroads and surface roads, affecting property in a way which had never transpired before in regard to street surface lines, and in which class of cases came the O'Brien case, 111 N. Y. 1, holding that property, if taken away, ought to be the subject of compensation. In 1875, the Legislature, forecasting, apparently, what might transpire in the future, passed a law
3234 by which elevated railroads were to be erected, not on lines laid out by the railroad company, but by lines laid out by the Transit Commission, given transit as a matter of public convenience and necessity. If you follow the Legislation from then on to that pertaining to the Broadway surface lines, you come to the point that when these rights were taken by the railroad companies, the companies knew that they were given to them as a matter of public convenience and necessity and that such rights were subject to the proposition that their right to continue should subsist while that convenience and necessity obtained. Now,

in this particular case the convenience and necessity certificate was predicated for this spur, an extraordinary condition in a way, upon the proposition that it would bring about rapid transit, conveying the public from the north of the city south by the New York Central Lines to the Grand Central, and via the 42nd Street Spur and the Elevated south. Afte two years the Elevated ran north. The spur, it is pretty safe to say, never would have existed had the line ran north on and up to 125th Street then, and not as it did two years later. Then came the Subway providing still quicker transit for north and southbound travel, so that we come to a point where the intention of the legislation, as I see it, was that these rights, such as the spur, were to exist and with the knowledge of the receivers only so long as they should be a matter of public convenience and necessity. If that was its intent,—this is the significant thing,—then this spur was accepted upon the theory that it would have a right commensurate with public convenience and necessity and that when that right disappeared, all the right to it disappeared.

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The Court: Is not this a question you might raise on the appeal to this Court?

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Mr. Page: It is. We only thought it fair, if we have salient points, if there be any ground for such, it might be newly discovered evidence for your Honor to consider. We thought it only fair to present it to your Honor to the end that if your Honor saw fit as even Napoleon did, to change his mind, if occasion arises, your Honor is free to do so. This is something I will submit to your Honor.

The Court: Mr. Page, I think the rights of all the parties concerned here will be protected. If I have made a mistake it will be corrected here, I see nothing more for me to do in this case than

3238 to rest up the decision I made, and I see no reason for continuing it any further and I am inclined to close it up.

Mr. Wright: I should like to urge two grounds of objection to the assessment against Cooper Union. One ground relates to the lower rate of the assessment against the Grand Central Terminal, and as my argument depends on two points of fact of which the Court may take judicial notice, I would ask, if I am correctly informed, that it be stated on the record as a fact, that the rate

3239 of assessment, the unit of assessment as to that part of the Grand Central Terminal property assessment, Lot 13, lying within Zone A, is $7,000 a city lot, 25 x 100, and that the rate or unit of assessment of property elsewhere in Zone A, except at the corner of Third Avenue is $14,000 a city lot. The second point is the use to which the Grand Central Terminal, or rather that part lying within Zone A is being put to. I can call a witness as to this, or I can read this statement, and unless someone objects to it, I will read it;

That part of assessment Lot No. 13 which lies

3240 within Zone A is used in part for the following purposes:

The easterly portion for a distance of about 15 feet on the sidewalk level is occupied as a retail cigar store. The space immediately in the rear is used as a subway entrance, and the space still further in the rear, extending back a total distance of about 100 feet, is used for a restaurant. The next thirty feet of frontage immediately adjoining on the west is occupied as a passage way for train passengers.

The next space on the west adjacent to said passage way, extending along 42nd Street on the street level, a distance of about 95 feet, and with

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a depth of 50 feet, is occupied and operated as a restaurant.

The next space adjoining the restaurant on the west, with a frontage of about 30 feet along 42nd Street, is occupied by a retail florist shop.

The next space on the west adjoining the florist shop is used as a passageway for train passengers leading to the waiting-room.

The space north of the restaurant and florist shop is used as a station waiting-room, and the floors above the waiting-room are devoted to offices.

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The Court: Is there any objection to that statement? (No response.)

Mr. Wright: There is one additional fact, if your Honor please, that I would like to read if I may be given the time. It relates to the overhead roadway on the southerly and easterly sides of said assessment lot 13.

On and prior to June 15, 1911, the New York Central and Hudson River Railroad Company owned in fee the land on the northerly side of 42nd Street from the westerly line of Depew Place to a point now intersected by the easterly line of the viaduct over 42nd Street. On June 15, 1911, the New York Central and Hudson River Railroad Company acquired from the City of New York in fee the bed of Depew Place and owned the same on the date of vesting title herein.

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May I add that the subsequent conveyance of a right of way was not made by the New York Central until after that, on April 11, 1924.

Now, if your Honor please, I have here my argument in the form of a brief with cases cited. Briefly, the point is this: The Grand Central Terminal property, being railroad property, is assessed at a lower rate, and we contend that under the facts in this case and in the light of the law,

3244 as your Honor will see it in the cases I have cited, I think, that the Grand Central Terminal should be assessed at the same rate as all the property. I think the rule of the cases in regard to assessments against railroad property, if I have read the cases correctly, starting with the basis that they are all laid according to benefit, where a railroad holds its title to railroad property with a right of way and with tracks under ground, these improvements did not decrease its value, and it seems to me it is a question of benefit. Whether the prop-
3245 erty can be used for purposes strictly other than those of railroad or corporate property is a fact the Court can take judicial notice of. In one case cited where the property was used for storage barns and storage yards a reduction of only 25% is justified. In that case there was a use for strictly railroad purposes. What happens in this case: The New York Central has title to this property and not only can, but has to a certain extent devoted that property to commercial purposes in the street level stores there, and it is receiving a greater benefit for that part of their property than any
3246 of the rest of us along there. There is nothing to prevent building up and devoting all of that property for income purposes. I think it is fair to assume it may do so.

The Court: You may file a brief on that.

Mr. Wright: May I file a supplemental objection covering the point I have referred to?

The Court: You may.

Mr. Page: Is permission granted to counsel, your Honor, to file supplemental objections covering the point outlined by me.

The Court: Yes.

Decision reserved.

City's Exhibit 1—Order Appointing Extraordinary Term of Supreme Court. 3247

(This order is printed at page 144 of the record.)

City's Exhibit 2—Affidavit of Wolfenden as to Publication of Order Appointing Extraordinary Term of Supreme Court in N. Y. Herald.

State of New York, City and County of New York, Borough of Manhattan, ss.

S. Wolfenden, being duly sworn, says that he 3248
is the Principal Clerk of the Publisher of The New York Herald a daily newspaper printed and published in the City and County of New York, Borough of Manhattan; that the advertisement hereto annexed has been regularly published in the said newspaper on September 17 and 20, 1923.

(Signed) S. Wolfenden.

Sworn to before me this 20th day of September, 1923.

S. K. Meringer, Notary Public for Queens Co., 2151; Certificate filed in New York Co. 217 New 3249
York Co. Register's No. 5621. Appointment expires March 30, 1925.

[Seal]

(The advertisement annexed to the aforesaid affidavit of S. Wolfenden is printed at page 144 of the record.)

3250 **City's Exhibit 3—Affidavit of Cosgrove as to Publication of Order Appointing Extraordinary Term of Supreme Court in N. Y. Law Journal.**

State of New York, City and County of New York, ss.

John J. Cosgrove, being duly sworn, says that he is the Principal Clerk of the Publisher of The New York Law Journal, a Daily Newspaper printed and published in the County of New York; that the Advertisement hereto annexed has been regularly published in the said The New York Law Journal,
3251 twice, to wit: on September 17th and 20th, 1923.

John J. Cosgrove.

Sworn to before me this 20th day of September, 1923.

Joseph M. Devay, Notary Public, Kings County No. 56; Certificate Filed in New York County No. 78; Certificate filed in Bronx County No. 2; Commission expires March 30, 1924.

(The advertisement annexed to the aforesaid affidavit of John J. Cosgrove is printed at page
3252 144 of the record.)

City's Exhibit 4—Affidavit of Johannes as to Publication of Order Appointing Extraordinary Term of Supreme Court in "The World." 3253

State of New York, City and County of New York, ss.

Albert H. Johannes, of said City, being duly sworn says that he is the Principal Clerk of the Publisher of "The World," a daily newspaper printed and published in the City of New York, and that the notice, of which the annexed is a copy was published in the said newspaper on the 17th and 20th days of September, last past. 3254

Albert H. Johannes.

Sworn to before me this 20th day of September, 1923.

E. A. Pratt, Notary Public, Nassau County, Certificate filed in N. Y. Co. No. 6; N. Y. Register No. 4035. Commission expires March 30, 1924.

[Seal]

(The notice annexed to the aforesaid affidavit of Albert H. Johannes is printed at page 144 of the record.) 3255

3256 **City's Exhibit 5—Affidavit of Jaros as to Publication of Order Appointing Extraordinary Term of Supreme Court in N. Y. Times.**

State of New York, City and County of New York, ss.

Charles W. Jaros being duly sworn says he is the principal clerk of the Publisher of The New York Times a daily newspaper printed and published in the City and County of New York, that the advertisement hereto annexed has been regu-
3257 larly published in the said The New York Times commencing on the Seventeenth day of September, 1923 to wit on September 17th and 20th, 1923.

Charles W. Jaros.

Sworn to before me this 20th day of September, 1923.

August Weisberg, Notary Public, Kings County; New York County No. 255; Commission expires March 30, 1924.

[Seal]

3258 (The advertisement annexed to the aforesaid affidavit of Charles W. Jaros is printed at page 144 of the record.)

City's Exhibit 6—Chap. 788, Laws of 1917.

(See stipulation printed at page 1877 of the record.)

City's Exhibit 7—Chap. 611, Laws of 1919.

(See stipulation printed at page 1877 of the record.)

City's Exhibit 8—Chap. 635, Laws of 1923. 3259

(See stipulation printed at page 1877 of the record.)

City's Exhibit 9—Resolution of Board of Estimate and Apportionment Duly Adopted December 5, 1919, Authorizing President of Borough of Manhattan to Take Up Negotiations With Manhattan Railway Co., Etc.

Board of Estimate and Apportionment City of New York. (Cal. No. 50.) 3260

Resolved, That the President of the Borough of Manhattan be and he hereby is authorized to take up negotiations with the Manhattan Railway Company for the removal of the tracks, structures, station and appurtenances on Forty-second street between Third avenue and Park avenue, by agreement, in accordance with the provisions of Chapter 788 of the Laws of 1917, as amended and supplemented by Chapter 611 of the Laws of 1919.

I hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Estimate and Apportionment at a meeting of said Board held on December 5, 1919. 3261

James Matthews, Assistant Secretary.

3262 **City's Exhibit 10—Pages 6350-6352, Inc. of Minutes of Board of Estimate and Apportionment of Meeting Held on Nov. 26, 1920 (Vol. 7 of Minutes of Board of Estimate and Apportionment Held Between Nov. 13th and Dec. 31st, 1920).**

President, Borough of Manhattan—Removal of Elevated Railroad Structure in 42d Street (Cal. No. 50).

(On December 5, 1919 [Cal. No. 50], the Board authorized the President of the Borough of Manhattan to enter into negotiations for the removal
3263 of this structure.)

The Secretary presented the following:

City of New York, Borough of Manhattan, office of the President, Municipal Building, November 12, 1920.

To the Board of Estimate and Apportionment, Municipal Building, New York City:

Dear Sirs:—By resolution of the Board of Estimate and Apportionment adopted on December 5, 1919, the President of the Borough of Manhattan
3264 was authorized to negotiate with the Manhattan Railway Company for the removal of the tracks, structure, station and appurtenances on 42d street between 3d avenue and Park avenue, by agreement, in accordance with the provisions of chapter 788 of the Laws of 1917, as amended, and supplemented by chapter 611 of the Laws of 1919.

Chapter 788 of the Laws of 1917 empowered the Public Service Commission, with the approval of the Board of Estimate, to authorize the removal of the structure by the Manhattan Railway Com-

pany and to arrangement for the payment of the expense thereof either by the company or by the City or by the apportionment between the company and the City. 3265

The result of the negotiations under this act was a statement by the railway company that "their attitude is one of complete opposition to the removal of this spur." This ended the negotiations under this act because it was purely permissive, so that the City had no means of pressing the matter further. Still believing that the structure was more of an obstacle to traffic and the proper development of 42d street than a necessity and convenience for the public service, the City had introduced in the 1919 Legislature by the Corporation Counsel a bill to amend the Act of 1917. The Act which was passed in 1919 is amendatory and supplementary to the Act of 1917 and provides that in the event that no certificate shall have been issued, approved and accepted on or before October 1, 1919, and if no agreement can be reached with the Manhattan Railway Company for the removal of the said tracks, structure, station and appurtenances, the Board of Estimate may present to the Public Service Commission a certified resolution requesting it to hold hearings for the purpose of determining whether such existing tracks, structure, station and appurtenances are necessary and convenient for the public service, or whether, even if necessary and convenient, they constitute an impediment or obstruction to the public use of the street. After the presentation of such a resolution by the Board of Estimate, the Public Service Commission shall institute proceedings, hold hearings and determine whether the structure is a public necessity and convenience; 3266 3267

3268 or even if it is, it shall determine whether any unit or portion thereof constitutes an impediment or obstruction to the public use of the street and shall so certify to the Secretary of State, to the City and to the Manhattan Railway Company.

The Act further provides that upon the making of such a certificate by the Public Service Commission, the City shall have the right to condemn and remove the structure; but in the event that it does this, it must also condemn the rights, easements and franchises of the company. It also pro-

3269 vides that the condemnation proceedings shall be instituted and prosecuted in accordance with the provision of title 4 of chapter 17 of the Greater New York Charter relative to the condemnation of real property for streets and parks. Under these provisions the City may fix an area of benefit and assess thereon the cost of condemning and removing the structure and the franchise and easement rights.

No certificate having been made on or prior to October 1, 1919, the facts were presented to the Board and the resolution above referred to was

3270 adopted, authorizing the Borough President to take up negotiations with the company. Accordingly, negotiations were taken up with the President and the Counsel for the company. A preliminary conference was held by my predecessor at which the subject was discussed generally. The company offered any information in its possession which might be of value to reach an agreement. A letter was thereupon addressed to the company requesting specific information as to number of passengers carried and transferred, the number of car-miles operated, the cost of operating, the original cost of the structure, the valuation of the special

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franchise for taxation purposes, both as to tangible and intangible items, and the cost of removing the physical structure. The company was also asked to name the consideration for which it would remove the spur. This information was furnished by it to the extent that it was said to be available. The original cost of the structure was not given because the company claimed that it was not fully available. An estimate of the cost of reproducing the structure, however, was given, which the company claimed represented the value of the structure for purposes of negotiation for its removal. The company estimated that the removal of the structure represented a loss of $434,570 and that the original cost of the easements was $503,440, exclusive of easements acquired by prescription. This makes a total of $938,000.

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It should be pointed out that the loss which it is claimed would be entailed in the removal of the structure is the estimated cost of reproducing it. The unit values given by the company to the State Tax Department for tax purposes would make the value of this structure about $126,000 instead of $434,570.

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The company, however, did not state any consideration for which it would remove the structure. It stated, in conclusion:

"You must appreciate the point of view entertained by this company that we are disinclined to undertake further consideration of the cost involved in the loss of this facility prior to a determination as to whether it should not be maintained as a public convenience and necessity, irrespective of the question of compensation for its destruction."

3274 A subsequent request was made for information as to the value of the easements acquired by prescription, as to the original cost of the structure, and the consideration for which the company would remove it. As to the former, the company stated that these easements had a present value of more than $1,700,000, which added to the original cost of the easements which were paid for makes a total of over $2,200,000. The company reiterated its statement that the original cost of the structure was not available, but gave an item-

3275 ized estimate of the reproduction cost. It also failed to state a consideration for which it would remove the structure.

In view of the fact that the structure is to be valued for the purpose of discontinuing its use and removing it, and not for the purpose of continuing its use, its value should be determined by its original cost. This is true, furthermore, in view of the fact that it is not an asset but a liability from an operating point of view. The claim has frequently been made that the entire elevated railroad system is at present operated at a loss.

3276 The ratio of the length of the 42nd Street spur to the length of the 3rd Avenue elevated, of which it is a part, is as 1 to 70. While it may not be equitable to apportion the receipts from the sale of tickets at the Grand Central Station in this ratio, it will readily be seen that by far the greater portion of this income must be credited to the 3rd Avenue line if it is to be apportioned in the ratio of the length of ride as between the 42nd Street spur and the 3rd Avenue line. Furthermore, the cost of the operation of the 42nd Street spur must be considerably greater than on the 3rd Avenue line, for the reason that the former

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is operated with much smaller train units with a correspondingly higher overhead expense.

The spur was originally built for the accommodation of the commuters on the New York Central and on the New Haven Railroads. A casual observation of traffic indicates that a very large percentage of those using the 42d street spur come from points west of the Grand Central Station, and that many of those which enter or come from the Grand Central Station use it as a thoroughfare and do not travel on either of the railroads and that the peak of travel is west in the morning and east 3278
in the evening, showing that it is no longer needed for the accommodation of commuters. It also developed that most of the spur passengers use the express trains on 3d avenue north of 42d street. The presumption is that they are largely people who live at points in The Bronx which are not served by the subways. If this is so, they are mostly long-haul passengers, which strengthens the suspicion that the spur is a liability and not an asset. It also indicates that the 3d avenue line would not lose this traffic if the spur were removed.

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In view of the fact that the company has failed to name any consideration for which it would remove the structure, and in view of the high valuation placed on the structure ($434,570) and on the easements ($2,200,000), a total of over $2,600,000, I beg to report to the Board of Estimate and Apportionment that in my opinion no agreement can be reached between the City and the company. Should the Board share this view and desire to continue the proceeding, the next step will be the adoption of a resolution requesting action by the Public Service Commission in accordance

3280 with the provisions of chapter 600 of the Laws of 1919.

Copies of the correspondence between this office and the Manhattan Railway Company are attached. Yours very truly,

HENRY H. CURRAN,
President, Borough of Manhattan.

The matter was referred to the Committee on Finance and Budget, also to the Committee of Assessments; the Board of Assessors, the Department
3281 of Taxes and Assessments, the Corporation Counsel and to the Chief Engineer of the Board to report to said Committee.

City's Exhibit 11—Resolution of Board of Estimate and Apportionment Duly Adopted January 14, 1921, Requesting Public Service Commission to Institute Proceedings, Etc., Pursuant to Chap. 788, Laws of 1917 as Amended by Chap. 611, Laws of 1919.

3282 Board of Estimate and Apportionment City of New York (No. 10)

Whereas, Chapter 788 of the Laws of 1917 provides for the removal by the Manhattan Railway Company of its tracks, structure, station and appurtenances existing in East 42d street, Borough of Manhattan, upon the authority of the Public Service Commission for the First District, evidenced by a certificate to be granted by said Commission to be approved by the Board of Estimate and Apportionment and to be accepted by the said company; and

3283

Whereas, Said Act was amended and supplemented by chapter 611 of the Laws of 1919, which provides that if a certificate shall not have been made, approved and accepted, pursuant to the above provision, on or before October 1, 1919, for the removal of such tracks, structure, station and appurtenances and if no agreement can be reached with the Manhattan Railway Company for such removal, the Public Service Commission for the First District, upon the presentation to it of a certified copy of a resolution adopted by the Board of Estimate and Apportionment containing a re- 3284
quest therefor, shall institute a proceeding and conduct a hearing or hearings for the purpose of determining whether such existing tracks, structure, station and appurtenances are necessary and convenient for the public service or whether, even if necessary and convenient, such tracks, structure, station and appurtenances or any unit or portion thereof constitute an impediment or obstruction to the use of the street; and

Whereas, No certificate authorizing the removal of such track, structure, station or appurtenances was made, approved and accepted on or before 3285
October 1, 1919; and

Whereas, On December 5, 1919, this Board adopted a resolution authorizing the President of the Borough of Manhattan to negotiate with said Manhattan Railway Company for the purpose of arriving at an agreement, pursuant to which the removal of the tracks, structure, station and appurtenances could be accomplished as contemplated by the provisions of law above referred to; and

Whereas, Said President of the Borough of

3286 Manhattan presented a report to this Board on November 26, 1920, setting forth that he had opened and carried on negotiations with the Manhattan Railway Company, through its President, Mr. Alfred Skitt and its counsel, Mr. Nichols, pursuant to the resolution of December 5, 1919, but that no agreement had been reached and that, in his opinion, no agreement can be reached with the said company for the removal of its tracks, structure, station and appurtenances; now therefore be it

3287 Resolved, That the Public Service Commission for the First District be and it is hereby requested to institute a proceeding and conduct a hearing or hearings pursuant to the provisions of said chapter 788, Laws of 1917, as amended by said chapter 611 of the Laws of 1919, for the purpose of determining the questions and matters set forth and specified in said acts.

A true copy of resolution adopted by the Board of Estimate and Apportionment, January 14, 1921.

James Matthews, Assistant Secretary.

3288

City's Exhibit 12—Order and Determination of Public Service Commission (Case No. 2582).

Before the Public Service Commission of the State of New York for the First District, No. 49 Lafeyette Street, Borough of Manhattan, City of New York, the 22nd day of April, 1921.

Present—Honorable ALFRED M. BARRETT, Commissioner.

In the Matter of the Application of the Board

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of Estimate and Apportionment of The City of New York for a determination of the question whether the existing tracks, structures, station and appurtenances of the Manhattan Railway Company in East Forty-second Street, Borough of Manhattan, City of New York are necessary and convenient for the public service or, whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of said street.

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(Case No. 2582. Order and Determination.)

An Act having been passed by the legislature in 1917 (Chapter 788 of the Laws of that year) empowering the Commission, with the approval of the Board of Estimate and Apportionment of The City of New York, to authorize the removal of the existing elevated structure and appurtenances in East Forty-second Street, Borough of Manhattan, New York City; and it having been further provided in and by said statute that the authorization might be given by a certificate granted by the Commission to the Railway Company, with the approval of the Board of Estimate and Apportionment, and accepted by the Railway Company, such certificate to include such terms and conditions as might be necessary or proper to accomplish such removal and to provide for the payment of the expense thereof, either by the Company, or by the City, or by apportionment of the same between the company and the City; and a further Act having been passed by the Legislature in 1919 (Chapter 611 of the Laws of that year), amending the Act of 1917 by adding thereto a new section which provided that if on or before

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3292 October 1, 1919, no certificate shall have been made, approved and accepted pursuant to the provisions of the preceding section, and no agreement can be reached with the Manhattan Railway Company as to the removal of the structure, the Commission, on presentation to it of a certified copy of a resolution of the Board of Estimate and Apportionment containing a request therefor, shall institute a proceeding and conduct a hearing before the Commission for the purpose of determining whether the tracks, structure, station
3293 and appurtenances in East Forty-second Street are necessary and convenient for the public service, or whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of the street; and it having been further provided in and by said section that if, after such hearing, the Commission shall determine that such tracks, structure, station and appurtenances are no longer necessary and convenient for the public service, or, even if necessary and convenient, that such tracks, structure, station and appurtenances
3294 constitute an impediment or obstruction to the public use of the street, the Commission shall make a certificate to that effect, and cause a certified copy thereof to be filed in the office of the Secretary of State, and also cause a certified copy thereof to be served upon said City and upon said Manhattan Railway Company, and that thereupon the City shall have the right to condemn and remove from the street, such tracks, structure, station and appurtenances; and it having been further provided in and by said section that notice of such proceeding before the Commission, and of the original hearing to be had thereon, be

served upon said Manhattan Railway Company, not less than twenty days before the date fixed for such hearing, and published daily for at least fourteen days prior to the date of such hearing, in two daily newspapers published in the Borough of Manhattan, City of New York; and it having been further provided in and by the said section that such hearing before the Commission must be completed within thirty days after the date of the original hearing, and that the decision thereon must be rendered by the Commission within thirty days after the date of the final hearing; and application having been made to this Commission by the Board of Estimate and Apportionment of The City of New York by certified copy of resolution adopted by said Board on January 14, 1921, pursuant to the above statutes, for a determination of the question whether the existing tracks, structure, station and appurtenances of the Manhattan Railway Company in East Forty-second Street are necessary and convenient for the public service, or whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of said street, and a hearing having been duly had by and before the Commission upon said application; and it appearing

(1) That on or before October 1, 1919 no certificate was made, approved and accepted pursuant to Chapter 788 of the Laws of 1917,

(2) That prior to January 14, 1921 the Board of Estimate and Apportionment of The City of New York attempted to reach an agreement with the Manhattan Railway Company as to the removal of the aforesaid tracks, structure, station

3298 and appurtenances in East Forty-second Street, but no such agreement could be reached.

(3 That on January 14, 1921, the said Board of Estimate and Apportionment of The City of New York duly adopted a resolution pursuant to Chapter 788 of the Laws of 1917 as amended by Chapter 611 of the Laws of 1919, reciting that no certificate authorizing the removal of said tracks, structure, station and appurtenances had been made, approved and accepted on or before October 1, 1919, but that attempts had been made by
3299 The City of New York to reach an agreement with the Manhattan Railway Company for the removal of said tracks, structure, station and appurtenances, but without success, and that in the opinion of the President of the Borough of Manhattan, by whom the negotiations with the Company had been conducted, no such agreement could be reached; and requesting the Public Service Commission for the First District to institute a proceeding and conduct a hearing or hearings pursuant to the provisions of said statutes, for the purpose of determining the questions and matters set
3300 forth and specified in said statutes.

(4) That under date of January 20, 1921, the Secretary of the Board of Estimate and Apportionment of The City of New York transmitted to the Commission a certified copy of the aforesaid resolution of January 14, 1921.

(5) That on February 21, 1921, the Commission duly adopted an order for hearing pursuant to the aforesaid statutes and pursuant to the said certified copy of resolution of the Board of Estimate and Apportionment dated January 14, 1921,

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for the purpose of determining the questions which, by said statutes, the Commission is authorized and required to determine. That in and by said order for hearing, the date of the first or original hearing in said matter was specified as March 21, 1921.

(6) That notice of such proceeding and of the original hearing to be held thereon was served upon the said Manhattan Railway Company not less than twenty days before the date fixed for said hearing and was published daily for at least fourteen days prior to the date of such hearing in two daily newspapers published in the Borough of Manhattan, City of New York.

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(7) That said hearing was commenced on March 21, 1921 and was completed on April 12, 1921, and therefore said hearing did not cover a period of more than thirty days from and after the date of the original hearing.

And it being now the opinion of the Commission that the aforesaid tracks, structure, station and appurtenances of the Manhattan Railway Company in East Forty second Street, are no longer necessary and convenient for the public service and constitute an impediment and obstruction to the public use of said street; now therefore

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The Public Service Commission for the First District does hereby order and determine

(1) That the tracks, structure, station and appurtenances of the Manhattan Railway Company in East Forty-second Street, in the Borough of Manhattan, City of New York are no longer necessary and convenient for the public service, and constitute an impediment and obstruction to the public use of said street.

3304 (2) That pursuant to the aforesaid determination, a certificate to that effect shall be made by the Commission.

(3) That a certified copy of such certificate shall be filed in the office of the Secretary of State.

(4) That a certified copy of such certificate shall be served upon the City of New York.

(5) That a certified copy of such certificate shall be served upon said Manhattan Railway Company.

3305 By the Commission, James B. Walker, Secretary. [Seal]

State of New York, County of New York, ss.:

I, James B. Walker, Secretary of the Public Service Commission for the First District do hereby certify, that I have compared the above with the original approved by said Commission on April 22, 1921, and that it is a correct transcript therefrom and of the whole of the original.

In Testimony Whereof, I have hereunto subscribed my hand and affixed the seal of the Commission this 25th day of April, 1921.

3306

[Seal] James B. Walker, Secretary.

City's Exhibit 13—Certificate of Public Service Commission (Case No. 2582).

State of New York, Public Service Commission for the First District.

In the Matter of the Application of the Board of Estimate and Apportionment of The City of New York for a determination of the question whether the existing tracks, structure, station and

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appurtenances of the Manhattan Railway Company in East Forty-second Street, Borough of Manhattan, City of New York, are necessary and convenient for the public service, or, whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of said street.

(Case No. 2582. Certificate.)

3308

An Act having been passed by the Legislature in 1917 (Chapter 788 of the Laws of that year) empowering the Commission, with the approval of the Board of Estimate and Apportionment of The City of New York, to authorize the removal of the existing elevated structure and appurtenances in East Forty-second Street, Borough of Manhattan, New York City: and it having been further provided in and by said statute that the authorization might be given by a certificate granted by the Commission to the Railway Company with the approval of the Board of Estimate and Apportionment, and accepted by the Railway Company, such certificate to include such terms and

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conditions as might be necessary or proper to accomplish such removal and to provide for the payment of the expense thereof, either by the Company, or by the City, or by apportionment of the same between the company and the City; and a further Act having been passed by the Legislature in 1919, (Chapter 611 of the Laws of that year), amending the Act of 1917 by adding thereto a new section which provided that if on or before October 1, 1919 no certificate shall have been made, approved and accepted pursuant to the provisions of the preceding section, and no agreement can be reached with the Manhattan Railway Company

3310 as to the removal of the structure, the Commission, on presentation to it of a certified copy of a resolution of the Board of Estimate and Apportionment containing a request therefor, shall institute a proceeding and conduct a hearing before the Commission for the purpose of determining whether the tracks, structure, station and appurtenances in East Forty-second Street are necessary and convenient for the public service, or whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an
3311 impediment or obstruction to the public use of the street; and it having been further provided in and by said section that if, after such hearing, the Commission shall determine that such tracks, structure, station and appurtenances are no longer necessary and convenient for the public service, or, even if necessary and convenient, that such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of the street, the Commission shall make a certificate to that effect, and cause a certified copy thereof to be filed in the office of the Secretary of State, and
3312 also cause a certified copy thereof to be served upon said City and upon said Manhattan Railway Company, and that thereupon the City shall have the right to condemn and remove from the street, such tracks, structure, station and appurtenances; and it having been further provided in and by said section that notice of such proceeding before the Commission, and of the original hearing to be had thereon, be served upon said Manhattan Railway Company not less than twenty days before the date fixed for such hearing, and published daily for at least fourteen days prior to the date of such hearing, in two daily newspapers published

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in the Borough of Manhattan, City of New York; and it having been further provided in and by the said section that such hearing before the Commission must be completed within thirty days after the date of the original hearing, and that the decision thereon must be rendered by the Commission within thirty days after the date of the final hearing; and application having been made to this Commission by the Board of Estimate and Apportionment of The City of New York by certified copy of resolution adopted by said Board on January 14, 1921, pursuant to the above statutes, for a 3314
determination of the question whether the existing tracks, structure, station and appurtenances of the Manhattan Railway Company in East Forty-second Street are necessary and convenient for the public service, or whether, even if necessary and convenient, such tracks, structure, station and appurtenances constitute an impediment or obstruction to the public use of said street; and a hearing having been duly had by and before the Commission upon said application; and the Commission having thereafter and on the 22nd day of April, 1921, made and entered an order (a certified copy 3315
whereof is hereto annexed and made a part hereof) in which the Commission found

(1) That on or before October 1, 1919, no certificate was made, approved and accepted pursuant to Chapter 788 of the Laws of 1917.

(2) That prior to January 14, 1921, the Board of Estimate and Apportionment of The City of New York attempted to reach an agreement with the Manhattan Railway Company as to the removal of the aforesaid tracks, structure, station and appurtenances in East Forty-second Street, but no such agreement could be reached.

3316 *City's Exhibits.*

(3) That on January 14, 1921, the said Board of Estimate and Apportionment of The City of New York duly adopted a resolution pursuant to Chapter 788 of the Laws of 1917 as amended by Chapter 611 of the Laws of 1919, reciting that no certificate authorizing the removal of said tracks, structure, station and appurtenances had been made, approved and accepted on or before October 1, 1919, and that attempts had been made by The City of New York to reach an agreement with the Manhattan Railway Company for the re-
3317 moval of said tracks, structure, station and appurtenances, but without success, and that in the opinion of the President of the Borough of Manhattan, by whom the negotiations with the company had been conducted, no such agreement could be reached; and requesting the Public Service Commission for the First District to institute a proceeding and conduct a hearing or hearings pursuant to the provisions of said statutes, for the purpose of determining the questions and matters set forth and specified in said statutes.

(4) That under date of January 20, 1921, the
3318 Secretary of the Board of Estimate and Apportionment of The City of New York transmitted to the Commission a certified copy of the aforesaid resolution of January 14, 1921.

(5) That on February 21, 1921, the Commission duly adopted an order for hearing pursuant to the aforesaid statutes and pursuant to the said certified copy of resolution of the Board of Estimate and Apportionment dated January 14, 1921, for the purpose of determining the questions which, by said statutes, the Commission is authorized and required to determine. That in and

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by said order for hearing, the date of the first or original hearing in said matter was specified as March 21, 1921.

(6) That notice of such proceeding and of the original hearing to be held thereon was served upon the said Manhattan Railway Company not less than twenty days before the date fixed for said hearing and was published daily for at least fourteen days prior to the date of such hearing in two daily newspapers published in the Borough of Manhattan, City of New York.

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(7) That said hearing was commenced on March 21, 1921, and was completed on April 12, 1921, and therefore said hearing did not cover a period of more than thirty days from and after the date of the original hearing.

And in which order the Commission determined

(1) That the tracks, structure, station and appurtenances of the Manhattan Railway Company in East Forty-second Street, in the Borough of Manhattan, City of New York are no longer necessary and convenient for the public service, and constitute an impediment or obstruction to the public use of said street.

3321

(2) That pursuant to the aforesaid determination, a certificate to that effect shall be made by the Commission.

(3) That a certified copy of such certificate shall be filed in the office of the Secretary of State.

(4) That a certified copy of such certificate shall be served upon The City of New York.

(5) That a certified copy of such certificate shall be served upon said Manhattan Railway Company.

3322 *City's Exhibits.*

Now, therefore, the Public Service Commission for the First District

DOES HEREBY CERTIFY, pursuant to said Chapter 788 of the Laws of 1917, as amended and supplemented by said Chapter 611 of the Laws of 1919, that the tracks, structure, station and appurtenances of the Manhattan Railway Company in East Forty-second Street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service, and constitute an impediment and obstruction to the public use
3323 of said street.

Dated April 22, 1921.

Alfred M. Barrett, Commissioner.

Attest: James B. Walker, Secretary.
(Seal)

State of New York, County of New York, ss.

I, James B. Walker, Secretary of Transit Commission, do hereby certify that I have compared the attached with the original adopted by the
3324 Public Service Commission for the First District on April 22, 1921, and on file in the office of said Transit Commission, and that it is a correct transcript thereof and of the whole of the original.

In testimony whereof, I have hereunto subscribed my hand and affixed the seal of the Transit Commission, this 11th day of July, 1923.

(Seal) James B. Walker, Secretary.

City's Exhibit 14—Resolution of Board of Estimate and Apportionment, Duly Adopted Sept. 30, 1921, Directing Institution of Proceeding. 3325

(This resolution is printed at page 81 of the record.)

City's Exhibit 15—Resolution of Board of Estimate and Apportionment, Duly Adopted June 29, 1923, Amending Resolution Adopted Sept. 30, 1921.

(This resolution is printed at page 84 of the record.) 3326

City's Exhibit 16—Notice of Motion or Application of The City of New York for Order to Condemn.

(This notice is printed at page 94 of the record.)

City's Exhibit 16—Petition of The City of New York for Order to Condemn.

(This petition is printed at page 99 of the record.) 3327

3328 **City's Exhibit 16—Affidavit of J. Osgood Nichols Submitted in Opposition to Petition of City.**

Supreme Court of the State of New York.

[SAME TITLE]

State of New York, County of New York, ss.:

J. Osgood Nichols, being duly sworn, deposes and says: that he is assistant attorney in the office of James L. Quackenbush, attorney for Interborough Rapid Transit Company, and has had charge on behalf of the Manhattan Company and its les-
3329 see, Interborough Rapid Transit Company, of all matters relating to the proposed removal of the elevated railway spur in 42nd Street.

That he appeared before the Public Service Commission in the proceeding to procure the determination by the Public Service Commission of the First District, whether the "existing tracks, structure, station and appurtenances or any unit or operation thereof" in 42nd Street "are no longer necessary and convenient to the Public Service" which Chapter 611 of the Laws of 1919 constituted a condition precedent of a condemnation by the
3330 city of the 42nd Street spur, so-called. At the termination of the proceedings before the said Commission instituted by the city, the Commission under date of April 22, 1921, wrote elaborate opinion which concludes as follows: "Nothing in the order or certificate issued by the Commission in this case should be construed as intended to prejudice the right of the Manhattan Company to maintain a station at 42nd Street on the main line of the Third Avenue elevated railroad, or as prejudicing the right of said company to provide and

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maintain such facilities in 42nd Street immediately adjacent and appurtenant to said station, as may be reasonably required to provide the necessary station facilities at said station."

The said act of 1919 retained Section 1 of the previous act of 1917, which is contained in full in the petition herein, and which provides for the removal by the Manhattan Railway Company "of the existing tracks, structure, station and appurtenances on its railroad on East 42nd Street," upon the authorization of the Public Service Commission. That a literal interpretation of the act was

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not intended for the legislature could not have contemplated the removal of all elevated railway structures upon East 42nd Street, as that would have resulted in the removal of structures necessary to the operation of the Third Avenue Line. Doubtless reliance was placed upon the discretion of the Public Service Commission in effecting a more precise and accurate expression of the legislative intent. Under the act of 1919 the Public Service Commission was in fact empowered to determine whether the structure in 42nd Street "or any unit or portion thereof" should be removed.

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The opinion of the Public Service Commission is not attached to the petition. Its order and certificate, if not construed by reference to the opinion accompanying the order and certificate and bearing the same date, would empower the city to remove all elevated structures within the limits of East 42nd Street. Under the act the city has no greater or other powers of condemnation than those which accord with the determination of the Public Service Commission. The city cannot arbitrarily select such railway structures in East 42nd Street as it may itself determine as the objects of

3334 condemnation. It follows that the city is itself compelled to seek in the opinion of the Commission accompanying its order and certificate or its further supplementary determination, some reasonable basis of definition of the area and character of the structures to be removed. Subsequent to the determination of the Commission it was realized that a more definite delimination of the scope of the proposed condemnation was essential to its legality and again application was made by the city to the legislature resulting in the amend-
3335 ments of 1923 which appear in full in the petition herein, and deponent was associated with Mr. Walling of the Corporation Counsel's office and Mr. Squier in preparing these amendments with the purpose of conforming to the determination of the Commission as evidenced by its opinion above quoted. The amendments accordingly provide that only such portion of the elevated railway structure in East 42nd Street "constituting the existing 42nd Street spur" should be removed. The legislation, as amended in 1923, thus clearly limits the right of condemnation to those structures with-
3336 in the limits specifically defined, which constitute the existing 42nd St. spur in distinction from such structures as may be necessary to the proper accommodation of the public in connection with the operation of the Third Ave. Line. Approximately 12,000 people use the spur daily, and obtain access to the elevated railroad by means of the stairway on Park Avenue at the termination of the spur. If the spur itself be removed, this stairway must be retained as a facility of the Third Avenue Line, or, in other words, the stairway which now accommodates 12,000 at Park Avenue must be relocated in 42nd Street as part of the Third Avenue

Line. The act recognizes this necessity, for following its limitation of the structures to be removed as those constituting the spur, occur the words "except as hereinafter provided," and there then follows the provision that "nothing in this act contained shall be deemed to extinguish or impair any existing franchise rights of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities including the stairways in connection with and immediately adjacent to its Third Avenue station at 42nd Street, as the Transit Commission may determine to be necessary for the public convenience and necessity." It was the purpose of deponent in suggesting the amendments referred to to assist in removing technical defects which prior to the amendment of 1923 had deterred the city from instituting condemnation proceedings, and to provide for a further determination by the Public Service Commission of the exact character of the facilities alternative to those removed necessary to the proper accommodation of the public and the operation of the Third Avenue Line, and it is respectfully submitted that the order herein should require such preliminary determination by the Public Service Commission.

3337 3338 3339

It is not sought to delay or impede the proposed condemnation. The Manhattan and Interborough Companies on the contrary desire to avoid, as heretofore, as far as possible, litigation or controversy of a technical character in relation to this condemnation.

There are obvious practical difficulties in proceeding without a prior determination of the Transit Commission as to what in fact constitutes the spur, the removal of which is authorized by exist-

3340 ing legislation and what it is necessary to preserve or reconstruct as necessary adjuncts of the Third Avenue Line. On the basis of such determination alone can the cost and damages involved be ascertained. The Interborough and Manhattan Companies are willing to stipulate to make immediate application to the Transit Commission for its determination and that that determination should be had within thirty days as required by the act of 1919.

If the order provides for this practical and sub-
3341 stantial condition, mere matters of technical objection may properly be waived in the interest of an avoidance of litigation. Section 1 of Chapter 788 of the Laws of 1917 provides that the proposed removal of structures should be "without prejudice to any franchise of said company to construct, maintain or operate the same, or the right or obligation of said company to restore the same in case such restoration shall be deemed to be necessary or convenient for the public service." It may be noted that by whom and under what circumstances the restoration shall be "deemed necessary" is left
3342 in singular obscurity, but such restoration is apparently predicated upon the theory that it would be in pursuance of the existing franchise of said company to construct, maintain or operate the same. It is submitted that there is no existing franchise which contemplates or permits the indefinite suspension of a right to lay down railway tracks in the public streets, and certainly the Manhattan franchises are not of that character. The act, therefore, confers a right which is radically different from and beyond the powers conferred by the existing franchises, and it is, of course, none the less violative of the constitution that this is

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attempted to be done under the guise of an amendment to, or more strictly stated, a suspension of an existing franchise.

Astor *et al. v.* Arcade St. Ry. Co., 113 N. Y. 111.

The act does not merely work an enlargement of the existing corporate powers. It effects a grant of an entirely new right, that of suspending indefinitely over the 42nd Street route an inchoate and exclusive power of occupation (Matter of Brooklyn W. & N. Co., 75 N. Y. 335; Harvey et al. v. Loew, 102 N. Y. 371).

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It is not intended to argue this point at length. The Interborough and Manhattan Companies will seek by stipulation or otherwise every reasonable means to avoid or minimize any technical difficulties providing that a corresponding effort is made by the city to institute the proceeding under conditions which will remove the practical difficulties which must certainly be encountered in the absence of a specific definition by the Public Service Commission of the alternative facilities to be maintained within the area defined in the petition for the necessary accommodation of the public in connection with the operation of the Third Avenue Line, subsequent to the removal of the so-called spur tracks.

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The insistence of counsel for the property owners who are primarily interested in the petition upon the argument of the motion that a speedy decision should be rendered in order that the Board of Estimate & Apportionment may take action vesting title in the city this week, with the unquestioned purpose of effecting an immediate removal of the structures, demonstrates the necessity of the clear definition of not only of what is actually to be re-

3346 moved, but also what is to be retained or provided by way of substitution in the area of condemnation prior to vesting title and, if the public interest is deemed paramount, before the proposed removal is effected.

It may be noted that two of the columns supporting the station of the Third Avenue Line are included in the area of condemnation set forth in the rule map attached to the petition. Doubtless it will be proper for the Transit Commission to determine that these columns should be relocated in
3347 the interest of clearing the roadway of 42nd Street, but some authorization must be had for a substituted location or public service of the Third Avenue Line would cease as well as the free five-cent transfer now afforded the public by the spur itself. Consent to the entry of the proposed order cannot in the public interest be given unless reasonable provision is made obviating any such result.

J. Osgood Nichols.

Sworn to before me this
17th day of July, 1923.

3348 William H. Swatton, Commissioner of Deeds, City of New York. New York Co. Clerk 9, Register 25062. Bronx County Clerk 1, Register 3152. Term Expires January 9, 1925.

City's Exhibit 16—Reply Affidavit of Albert T. Swords, Submitted on Behalf of City. 3349

Supreme Court, New York County.

[Same Title]

State of New York, County of New York, ss.:

Albert T. Swords, being duly sworn, deposes and says: I am an attorney and counselor-at-law and have been using the Grand Central Station at 42nd Street for thirty years and upwards.

In this period I have from time to time used said elevated spur in coming out of the Grand Central 3350
Station.

I have examined the charter rights of the Manhattan Elevated Railway Company as found and filed with the Public Service Commission for the First District.

I have also conferred with people in that vicinity who are familiar with the history of the structure, as the outcome of which I beg to state, as the result of my own observations and upon information and belief, as follows:

The existing approach on the western terminus of the spur by which passengers ascend and descend is without legal authority. The history of 3351
the situation is briefly, viz.:

(1) On December 23, 1885, passengers arrived on the El Spur in East 42nd Street by an extension of the elevated platform and went directly into the Grand Central Station on the second floor.

Here for fifteen years was maintained in the Grand Central Station the ticket office of the elevated company. This space was occupied under a lease from the New York Central and New Haven

3352 Railroads, dated December 23, 1885, for fifteen years, subject to termination on 30 days notice thereafter.

(2) In December, 1906, by exercise of this 30 day notice, the lease was terminated and all connection between the elevated platform and the Grand Central Station was torn down.

(3) After 1906, as a substitute for the Grand Central connection, two stairways were extended by the railroad company into 42nd Street for the
3353 handling of traffic, one on the sidewalk on the north opposite the Grand Central Station then at the corner of 42nd Street and Park Avenue and the other reaching the sidewalk opposite the Grand Union Hotel on Park Avenue.

Some years afterwards the stairway on the south, opposite the Grand Union Hotel, was removed upon the demand of the property owners.

Since that time the stairway on the north from the elevated structure into the street has been the only means of access, although erected, as above stated, without any legal authority.

3354 (4) The charter of the New York Elevated Railroad Company from which the Manhattan, as successor, derives its rights, gave it the right to build "to and connecting with the depot known as Grand Central."

This presupposes a physical connection and was the plan under which the original structure took place.

The later proceedings by which the stairway referred to in items "(2)" and "(3)" above were used, is clearly contrary to the charter right and

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the only right which the company has had in the premises.

Albert T. Swords.

Sworn to before me this 17th day of July, 1923.

Diana Steigman, Notary Public, Queens Co., No. 1851. Certificate filed New York Co. 605. New York Register's No. 5555. Term expires March 30, 1925.

(Seal)

3356

City's Exhibit 16—Affidavits of Viertel, of McCormick and of Murty as to Publication of Notice of Application of City for Order to Condemn in City Record and as to Posting Same.

(These affidavits are printed at pages 123 and 124 of the record.)

City's Exhibit 16—Order of Special Term Entered July 18, 1923, Granting Application of City of New York to Condemn. 3357

(This order is printed at page 125 of the record.)

City's Exhibit 17 for Identification—Claim of Manhattan Railway Co.

(This claim is printed at page 129 of the record.)

3358 **City's Exhibit 18 for Identification—Claim of Interborough Rapid Transit Co.**

(This claim is printed at page 131 of the record.)

City's Exhibit 19—Draft Damage Map Filed in N. Y. Co. Clerk's Office on July 19, 1923.

(This map is the same as the final Damage Map printed at page 1888 of the record.)

3359 **City's Exhibit 20—Notice of Trial.**

(This notice is printed at page 141 of the record.)

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City's Exhibit 22—Cost to Reproduce and Depreciated Value as of Nov. 1, 1923, of 42nd St. Elevated Spur from Park to 3rd Aves. 3361

COST TO REPRODUCE AND DEPRECIATED VALUE AS OF NOVEMBER 1, 1923, OF THE 42ND STREET ELEVATED SPUR FROM PARK TO THIRD AVENUES

Item	Unit	Cost to Reproduce	Depreciation %	Depreciation Amount	Depreciated Value
Foundations	45	$25,914			$25,914
Base Castings	124450# 10c.	12,445			12,445
Steel	628.88 t $105.40	66,284	45	$29,828	36,456
Drip Pans	7 $154.	1,078	90	970	108
Down Spouts	9 $ 20.	180	50	90	90
Track—rails, joints, signals & bumper blocks		9,372	25	2,343	7,029
Deck—ties, guard timber, track platform, etc.		14,080	70	9,856	4,224
Electrical Distribution		7,318	15	1,098	6,220
Station Buildings, Platforms, Stairways and Canopies		28,336	40	11,334	17,002
		$165,007		$55,519	$109,488
10% for Interest during construction, Engineering and Superintendence, Administration and Legal		$ 16,500		5,550	10,959
Total		$181,507		$61,069	$120,438

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3364 *City's Exhibits.*

FOUNDATIONS

Excavation	1138 cu. yds.	@ $ 5.50	$ 6,259.00
Rubble	266 "	@ $15.00	3,990.00
Brick	85 "	@ $32.70	2,779.50
Stone	546 cu. ft.	@ $ 1.50	819.00
Pavement replaced	355 sq. yds.	@ $ 5.69	2,019.95
Foundation Bolts	12965 lbs.	@ $ .08	1,037.20
Back Fill	496 cu. yds.	@ $ .50	248.00
Concrete	265 "	@ $15.00	3,975.00
Concrete Fenders	9	@ $10.00	90.00
Water Proofing	220 sq. yds.	@ $10.00	2,200.00
Wrt. Iron in foundations	9495 lbs.	@ $ .0499	473.80
Removing Obstructions	45 piers	@ $ 5.00	225.00
Cast Iron Washers	4948 lbs.	@ $ .0436	216.00
3365 Sidewalk Replaced	286 sq. ft.	@ $ .25	71.50
Cleaning up and Spoil	630 cu. yds.		1,510.00
			$25,913.95
Base Castings	124,450 lbs.	@ $ .10	12,445.00
			$38,358.95

STRUCTURE

Wrought Iron Structure (Steel weights)

Longitudinal Girders	854,663 lbs.
Transverse Girders	223,267 lbs.
Spread Top Columns	110,573 lbs.
Straight Top Columns	20,263 lbs.
Under Station Platforms	27,089 lbs.
3366 Steel Reinforcing	21,900 lbs.
	1,257,755 lbs. = 628.88 tons

Wrought Iron Structures,	628.88 tons	@ $105.40	$66,283.95
Drip Pans,	7	@ $154.00	1,078.00
Down Spouts,	9	@ $ 20.00	180.00
			$67,541.95

City's Exhibits. 3367

TRACK

Rail	61.07	tons	@ $54.22	$ 3,311.22
Joints	4.52	"	@ $54.22	245.07
Curving & drilling rail	16.00	"	@ $16.80	268.80
Track Bolts	6	kegs	@ $10.00	60.00
Spikes	20	kegs	@ $ 7.80	156.00
Tie Plates, Rail Braces, and Chocks	530			69.20
Signals	3			650.00
Switches	4		@ $345.	1,380.00
Bumper Blocks	3			1,600.00
Labor				1,632.07
				$ 9,372.36

DECK 3368

Ties	67,800	ft. BM.	@ $85.00	$ 5,763.00
Guard Timber	15,196	ft. BM.	@ $85.00	1,291.66
Track Platforms	9,693	ft. BM.	@ $85.00	823.91
Footwalks	10,265	ft. BM.	@ $85.00	872.53
Pipe Railing	2,053	lin. ft.	@ $ 1.00	2,053.00
Bolts—Machine & Hookhead	8,457	lbs.	@ $ .05	422.85
Bolts—for Guard Timber	6,744	lbs.	@ $ .05	337.20
Labor				2,515.76
				$14,079.91

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3370 *City's Exhibits.*

ELECTRICAL DISTRIBUTION SYSTEM

Third Rail	29.5	tons	@ $56.22	$1,658.49
" " insulators	224		@ $ 2.50	560.00
" " joints	66		@ $ 6.00	396.00
" " guard planks	3850	ft. BM.	@ $85.00	327.25
Track Bonds	122		@ $ 1.25	152.50
Thirdrail inclines	14		@ $11.00	154.00
Iron conduit	259	lin. ft.	@ $ 1.10	284.90
Cable Brackets	85		@ $ 1.00	85.00
Insulators	100		@ $ .29	29.00
Cable, weatherproof	1553	lbs.	@ 18c.	279.54
Iron Wire	366	lbs.	@ 3¼c.	11.90
Twisted Pair (copper)	155	lbs.	@ 18c.	27.90
Lag Screws	1671		@ 4½c.	75.20
3371 Cable (telephone)	1906	lin. ft.		730.25
Structure Bonds	60			77.00
Electric Lamps	75			1,010.00
3 wire lighting cable	1000	lin. ft.	@ 26c.	260.00
				$6,124.93
Labor				1,192.68
				$7,317.61

STATION BUILDINGS, STATION PLATFORMS, STAIRWAYS, CANOPIES, PLATFORM RAILINGS, PLATFORM SHIELDS, ETC.

Station Platforms	6108	sq. ft.	@ $ .65	$ 3,970.20
3372 Platform Railings	389	lin. ft.	@ $ 3.75	1,458.75
Platform Shields	117	lin. ft.	@ $ 11.63	1,360.71
Station Canopies	6615	sq. ft.	@ $ .93	6,151.95
Stairways and Canopy				2,985.70
Nails	740	lbs.	@ $ 3.74 per 100#	27.68
Sewer & Water Connections	2		@ $300.	600.00
Park Avenue Station	19,000	cu. ft.		7,418.41
Mens Comfort Building	3,510	"	@ $ .70	2,457.00
Locker Room Building	1,980	"	@ $ .60	1,188.00
3d Ave. Switch Cabin	296	"	@ $ .60	178.00
Circuit Breaker House	900	"	@ $ .60	540.00
				$28,336.40

City's Exhibit 23—Estimated Cost to Reproduce as of Nov. 1, 1923, Stairway and Canopy for Same at Park Ave. and 42nd Street.

32 wood treads x 7 ft. long = 224 lin. ft. of treads @ $2.87 per lin. ft. (avg. of 4 bids in Apr. 1920 on Rt. 31, Livonia Av. Ext., was $3.44, which reduced by index 221/265 = $2.87)		$ 642.88
Non-slip treads, 9½" wide x 6½' long x 32 treads = 166.4 s. f.		
.8 ft. x 6.5 ft. x 2 (double width at landings)	10.4 s. f.	
	176.8 s. f.	
say 177 sq. ft. @ $1.42 per sq. ft. (average of 4 bids, $1.70 of Apr. 22, 1920 on Route 31, brought to date by use of Index)		251.34
Canopy over stairs, 42 ft. long x 9 ft. wide = 378 sq. ft. @ $2.16 per sq. ft. (Avg. of 4 bids $2.59 of Apr. 22, 1920 on Route 31, brought to date by use of index)		816.48
		$1,710.70
Steel in Stairway		
Allow for foundation and pedestal	$250.00	
Column		
4 angles 3"x3" x 5/16" x 12' ea. = 50' @ 6.1#	= 305#	
1 plate 3' x 7' x 3/8" @ 45.9# per ft.	= 322#	
25 ft. of 3" x 3" 5/16 angles @ 6.1#	= 153#	
Stairway runs or Stringers		
8 newell posts	80.00	
50' x 2 = 100 ft. of 3/8" x 25" plates @ 31.88 lbs.	= 3190#	
50x2x2 = 200' of 1¼"x1¼"x3/16 angles @ 2.12#	= 424#	
50x2 = 100' of 1¼x1¼x¼" angles @ 1.92#	= 192#	
70 bars 3.33' = 235' of 3/4" square bars @ 1.91#	= 449#	
2 x 50 = 100' of 3/8 x 3" bars @ 3.83#	= 383#	
100 feet of hand rail	40.00	
Tread & Raiser Supports 1¼" x 1¼" x ¼" angles 18 ft. per tread and riser		
32x18 = 576' of 1¼ x 1¼ x ¼" angles @ 1.92#	= 1106#	
28' of 4" x 2½ angles @ 8.5#	= 238#	
Add 10% for rivets and connections	676#	
	7438#	
7438# (or 3.72 tons) @ 8c. per pound	595.00	$ 965.00
		$2,675.70
10% for Interest during Construction, Engineering & Superintendence, Administration and Legal		$ 267.57
		$2,943.27

3376 **Stipulation as to City's Exhibits 24 to 36 Both Inc., Being Monthly Reports of Ticket Sales for Years 1918 to 1923 and for First Four Months of Year 1924; Annual Reports for Years 1919 to 1923 and June Monthly Reports for Years 1919 to 1923 by Interborough Rapid Transit Co. to Transit Commission.**

New York Supreme Court, First Judicial District, County of New York.

[SAME TITLE]

3377 In lieu of printing City's Exhibits 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 admitted and received in evidence at pages 577 and 578 of the record, it is hereby stipulated and agreed by and between the parties hereto for the sole purpose of these appeals, that the contents of the aforesaid exhibits (City's Exhibits 24 to 36 both inclusive), in so far as material to these appeals, are contained in the testimony of Dr. John Bauer and of John C. Brackenridge given in this proceeding and the City's Exhibits prepared and made by the said Dr. John Bauer and by the said John C. Brackenridge and admitted and received in evi-
3378 dence as parts of the testimony or evidence in this proceeding.

It is further stipulated and agreed by and between the parties hereto for the sole purpose of these appeals that the aforesaid exhibits (City's Exhibits 24 to 36 both inclusive) may be used by and referred to on these appeals by any party hereto with the same force and effect as if the said Exhibits (City's Exhibits 24 to 36 both inclusive) were physically printed in the record on appeal herein.

3379

It is further stipulated and agreed by and between the parties hereto that in case of an appeal by any party hereto to the Court of Appeals from the order of the Appellate Division to be made and entered herein on these appeals that the aforesaid exhibits (City's Exhibits 24 to 36 both inclusive) may be used and referred to in the Court of Appeals by any party hereto with the same force and effect as if the aforesaid exhibits (City's Exhibits 24 to 36 both inclusive) were physically printed in the record on appeal to be used in the Court of Appeals.

3380

Dated New York August 15, 1928.

James L. Quackenbush, Attorney for the Interborough Rapid Transit Company.

Murray, Aldrich and Roberts, Attorneys for the Manhattan Railway Company.

George Welwood Murray, Attorney for The Equitable Trust Company of New York.

Page and Page, Attorneys for the Bowman Biltmore Hotels Corporation (Hotel Commodore) *et al.*

Edmund W. Van Voorhis, Attorney for the Pershing Square Building Corporation.

3381

Alex S. Lyman, Attorney for The New York Central Railroad Company, the New York and Harlem Railroad Company and the New York State Realty and Terminal Company.

Hollander & Bernheimer, Attorneys for Seward W. Ehrich, Inc.

Shearman & Sterling, Attorneys for Robert Walton Goelet, 145 East 41st Street Corporation, The National City Bank of New York and The National City Realty Corporation.

3382

Middlebrook and Sincerbeaux, Attorneys for the Manhattan Storage and Warehouse Company.

Parsons, Closson and McIlvaine, Attorneys for the Cooper Union for the Advancement of Science and Art.

George P. Nicholson, Corporation Counsel, Attorney for The City of New York.

Davies, Auerbach and Cornell, Attorneys for The Central Union Trust Company of New York.

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City's Exhibit 37—Count of Passengers Using 42nd Str. Shuttle at 42nd Str. and Park Ave., Nov. 20th and 21st, 1923. 3385

3RD AVE. ELEVATED DIV. I. R. T. CO.

COUNT OF PASSENGERS USING THE 42ND STR. SHUTTLE AT 42ND STR. & PARK AVE.

Inv. No. 17446

Tuesday Nov. 20th 1923

Time A. M.	Passengers Entering	Passengers Leaving	Total
6.10 to 7.00	45	69	114
8.00	71	1061	1132
9.00	193	3020	3213
10.00	146	1073	1219
11.00	172	366	538
12.00	101	312	413
P. M. 1.00	172	241	413
2.00	157	179	336
3.00	205	191	396
4.00	199	212	411
5.00	409	221	630
6.00	1807	279	2086
7.00	800	84	884
8.00	138	71	209
9.00	61	23	84
10.00	69	30	99
11.00	45	20	65
12.00	54	13	67
Totals	4844	7465	12309

Total Thro.' Passimeter 4704

Wednesday Nov. 21st 1923

Time A. M.	Passengers Entering	Passengers Leaving	Total
6.10 to 7.00	30	86	116
8.00	62	1026	1088
9.00	151	3014	3165
10.00	143	1016	1159
11.00	145	403	548
12.00	133	272	405
1.00	151	267	418
2.00	134	203	337
3.00	154	195	349
4.00	219	223	442
5.00	423	206	629
6.00	1819	286	2105
7.00	723	70	793
8.00	121	81	202
9.00	50	42	92
10.00	96	39	135
11.00	53	39	92
12.00	40	22	62
Totals	4647	7490	12137

Total Thro.' Passimeter 4584

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3387

TRANSIT COMMISSION, STATE OF NEW YORK
TRANSIT BUREAU

3388 **City's Exhibit 38—Tabulation Showing Results of Card Canvas of Passengers Using Shuttle Trains on 42nd St. Spur of 3rd Ave. Elevated Line, Nov. 21, 1923.**

I. R. T.

TABULATION SHOWING RESULTS OF CARD CANVAS OF PASSENGERS USING SHUTTLE TRAINS ON THE 42ND ST. SPUR OF THE 3RD AVE. ELEVATED LINE NOVEMBER 21ST 1923

Obs. No. 17446

	Station	Distance in Miles from 42nd St.	Length in Miles of Shuttle	Number of Persons	Passenger Miles from 42nd St.
3389	South Ferry	4.11	0.166	31	127.41
	Hanover Square	3.73	0.166	36	134.28
	Fulton St.	3.41	0.166	30	102.30
	Franklin Square	3.19	0.166	10	31.90
	City Hall	3.21	0.166	61	195.81
	Chatham Square	2.89	0.166	66	190.74
	Canal St.	2.66	0.166	124	329.84
	Grand St.	2.52	0.166	183	461.16
	Houston St.	2.10	0.166	57	119.70
	9th St.	1.64	0.166	43	70.52
	14th St.	1.39	0.166	77	107.03
	18th St.	1.19	0.166	69	82.11
	23rd St.	0.95	0.166	71	67.45
	28th St.	0.71	0.166	44	31.24
	34th St.	0.42	0.166	106	44.52
3390	Total	....	....	1008	2096.01

Average Passenger Miles on 3rd Ave "L"	2.079
Length of Shuttle in Miles	.166
Total Passenger Mile	2.245
Percentage 3rd Ave "L" is to Total Distance	92.606
" Shuttle " " " "	7.394
Actual Fare in Cents used on 3rd Ave "L"	4.630
" " " " " " Shuttle	0.370
Total	5.000

47th St.	0.24	0.166	30	7.20
53rd St.	0.54	0.166	26	14.04
59th St.	0.85	0.166	62	52.70
67th St.	1.24	0.166	88	109.12
76th St.	1.69	0.166	103	174.07
84th St.	2.10	0.166	153	321.30
89th St.	2.36	0.166	91	214.76
99th St.	2.88	0.166	146	420.48
106th St.	3.22	0.166	236	759.92
116th St.	3.73	0.166	123	458.79
125th St.	4.18	0.166	87	363.66
129th St.	4.41	0.166	66	291.06
Harlem River		0.166	17	
133rd St.	4.85	0.166	90	518.95
138th St.	5.01	0.166	62	310.62
143rd St.	5.27	0.166	118	621.86
149th St.	5.59	0.166	143	799.37
156th St.	6.05	0.166	90	544.50
161st St.	6.37	0.166	191	1216.67
166th St.	6.66	0.166	197	1312.02
169th St.	7.06	0.166	262	1849.72
Claremont P'way	7.47	0.166	174	1299.78
174th St.	7.79	0.166	161	1254.19
Tremont Ave.	8.06	0.166	261	2103.66
180th St.	8.40	0.166	178	1495.20
183rd St.	8.64	0.166	246	2125.44
Fordham Rd.	9.13	0.166	132	1205.16
Bronx Park	9.58	0.166	73	699.34
200th St.	9.73	0.166	18	175.14
204th St.	10.24	0.166	42	430.08
Williamsbridge	10.71	0.166	14	149.94
Gun Hill Rd.	11.07	0.166	27	298.89
219th St.	11.49	0.166	31	356.19
225th St.	11.81	0.166	31	366.11
233rd St.	12.20	0.166	17	207.40
238th St.	12.60	0.166	11	138.60
241st St.	13.03	0.166	23	299.69
Total	....	....	3820	22965.62

3392

3393

Average Passenger Miles on 3rd Ave "L"	6.012
Length of Shuttle in Miles	0.166
Total Passenger Mile	6.178
Percentage 3rd Ave "L" is to Total Distance	97.313
" Shuttle " " " "	2.687

3394

Actual Fare in Cents used on 3rd Ave. "L"	4.865
" " " " " " Shuttle	0.135
Total	5.000

Total Number of Cards given out	7700	
Cards Returned—Properly filled out	4828	= 63%
Improperly filled out	173	= 2%
Blank	441	= 6%
Total Returned	5442	= 71%
Cards not Returned	2258	= 29%

TRANSIT BUREAU—TRANSIT COMM.

3395

City's Exhibit 39—Statement Showing Ticket Sales and Actual Count of Tickets Deposited in Cancelling Box at Grand Central Station, 3rd Ave. Line, from Apr. 1 to Apr. 7, 1921.

Statement showing Ticket sales and Actual count of tickets deposited in cancelling box, at Grand Central station, Third Avenue Line. Manhattan Division. From Friday April 1st, 1921 to Thursday, April 7, 1921, Inclusive.

3396

		Grand Central Station	
1921	Weather Condition	Ticket Sales	Actual Count of Tickets in Cancelling Box
Fri. April 1	Rain & Clear P. M.	4395	4526
Sat. " 2	Clear	4973	5122
Sun. " 3	Clear	1796	1836
Mon. " 4	Clear	4894	4984
Tue. " 5	Clear	4267	4768
Wed. " 6	Clear	4338	4736
Thur. " 7	Cloudy Light Rain	3932	4444
	Total	28595	30416

Accounting Dept.
Agents Accounts Division
50 Park Place

H. T. Berry
Comptroller
Per J. S. Bruce

City's Exhibit 40 (City's Exhibit 40 for Identification)—Revenues Assignable to 42nd St. Elevated Spur for Fiscal Years (1919 to 1923) Ended June 30.

3397

REVENUES ASSIGNABLE TO THE 42ND STREET ELEVATED SPUR FOR THE FISCAL YEARS ENDED JUNE 30:

	1923	1922	1921	1920	1919
PASSENGER REVENUE					
1. Eastbound passengers					
2. Spur ticket sales at Grand Central	1,358,383	1,290,100	1,470,860	1,525,427	1,681,817
3. Add 6.5% excess of passengers over ticket sales	63,740	83,857	95,606	99,153	109,318
4. Total eastbound passengers	1,422,123	1,373,957	1,566,466	1,624,580	1,791,135
5. Westbound passengers—160% of eastbound	2,275,397	2,198,331	2,506,346	2,599,328	2,865,816
6. Total passengers—west and east bound	3,697,520	3,572,288	4,072,812	4,223,908	4,656,951
7. Gross revenue collected from total passengers on spur at 5 cents	$184,876.00	$178,614.40	$203,640.60	$211,195.40	$232,847.55
8. Revenue allocated to the spur—5% of gross revenue	$9,243.80	$8,930.72	$10,182.03	$10,559.77	$11,642.38
MISCELLANEOUS REVENUES					
9. Advertising and other privileges for elevated system	$481,327.17	$501,564.49	$503,070.88	$493,428.51	$430,886.84
10. Sale of power for elevated system	$1,153,833.39	$841,505.56	$868,530.62	$807,573.35	$624,379.56
11. Total miscellaneous revenue for elevated system	$1,635,160.56	$1,343,170.05	$1,371,601.50	$1,301,001.86	$1,055,266.40
12. Car miles operated on spur	70,170	70,033	70,543	80,393	92,702
13. Car miles operated on elevated system	64,716,517	64,336,893	69,233,962	74,134,495	79,013,929
14. Percent of car miles on spur compared with total elevated system	0.11	0.11	0.10	0.11%	0.12
15. Miscellaneous revenue allocated to spur on basis of percentage of car miles	$1,798.68	$1,477.49	$1,371.60	$1,431.10	$1,266.32
16. Total revenue allocated to spur—passenger and miscellaneous	$11,042.48	$10,408.21	$11,553.63	$11,990.87	$12,908.70

3398

EXPLANATIONS:

The purpose of this statement is to show the amount of gross revenues properly credited each year to the 42nd Street Elevated Spur, operated from the Grand Central Station to the Third Avenue Elevated Line and the calculation includes both passenger revenue and miscellaneous revenues.

The passenger revenue is computed

(1) by determining the number of passengers riding on the spur each year,

(2) multiplying the number by 5 cents to determine the total revenues collected from the spur passengers, and

(3) apportioning 5% of such total receipts to the spur; this apportionment is based on the relative distance travelled on the spur compared with the total average ride taken by the passengers on the spur and the Third Avenue Line combined.

The miscellaneous revenues in which the spur should properly share are

(1) advertising and other privileges and

(2) sale of power and the total revenues under these items are

(1) taken for the entire elevated system, and

(2) are apportioned to the spur on the basis of car miles operated on the spur compared with the total car miles on the Elevated System.

3399

The number of passengers riding on the spur each year is determined as follows:

(1) there is an accurate record of ticket sales at the Grand Central Station taken from monthly reports sworn to and filed by the Interborough Rapid Transit Company with the Transit Commission of the State of New York or its predecessor; but from about April 2nd, 1923 to June 30, 1923, the figure is that of turn-stile readings and not ticket sales, except that such turn-stile readings were taken as from April 1, 1923.

(2) The number of ticket sales is increased by 6.5% to determine the number of east-bound passengers; the fact was established in Case No. 2582 before the predecessor commission (p. 530 of the minutes), that the normal number of east-bound passengers exceeded the ticket sales by about 6.5% (shown by one week's count of tickets dropped in the collection box compared with ticket sales); the above percentage of increase was not applied to turn-stile readings from April 1, 1923.

(3) The number of east-bound passengers was increased by 60% to determine the number of west-bound passengers; this greater percentage of west-bound traffic was established by a physical count of passengers on November 20 and 21, 1923, by the Traffic Bureau of said Transit Commission.

The percentage of the total passenger revenue allocated to the spur is based on the relative distance on the spur compared with the average total distance travelled by the spur passengers. This percentage was found through a special inquiry on November 21, 1923, conducted by the Transit Bureau of said Commission and cards were given to west-bound passengers as they entered the spur at Third Avenue with the request to state at what station the particular passenger boarded the Third Avenue train. Of a total of 7,700 cards given out, 4,828 were collected at the west end of the spur properly filled out. From these cards the total distance travelled by all the passengers was computed, and it appeared that only 3.1% of the total distance was on the spur. But instead of this 3.1% as shown by the cards, 5% of the revenues collected from spur passengers is assigned in the above statement to the spur.

The miscellaneous revenues are taken from the monthly reports of revenues, and expenses, sworn to and filed by said Interborough Rapid Transit Company to said Transit Commission or its predecessor. The total car mileage for the entire elevated system is taken from the same monthly reports, while the car miles operated on the spur were furnished by a letter dated January 7, 1924, to Mr. L. Howell LaMotte, Assistant Corporation Counsel, and signed by J. L. Quackenbush for said Interborough Rapid Transit Company.

3400 **City's Exhibit 41—Letter from Quackenbush to LaMotte, Dated Jan. 7, 1924, re Certain Data.**

Interborough Rapid Transit Company, No. 165 Broadway.

New York, January 7, 1924.

James L. Quackenbush, General Counsel.

Mr. L. Howell LaMotte, Assistant Corporation Counsel, Municipal Building, New York City.

Dear Sir: Referring to your request for information for the use of Dr. Bauer, Dr. Bauer
3401 checked up the information which Mr. Nichols had collected on the several points specified in your letter, with the exception of certain costs of Sunday operation, not then available. I have now all of the data in hand and am submitting it herewith. If in any way it is insufficient for your purposes, will you kindly advise me. Please excuse delay in sending this information all of which, with the minor exception mentioned, has been submitted informally to Dr. Bauer.

1. The direct labor cost of operating the spur.

3402

4 Motormen	at $6.56	per day	$26.24	
4 Conductors	" 4.71	" "	18.84	
3 Guards	" 4.37	" "	13.11	
Total				$58.19
2 Hand Switchmen	" 4.79	" "	$ 9.58	9.58
*2 Agents	" 4.70	" "	9.40	
*1 Porter	" 3.47	" "	3.23	12.63
Total				$80.40

* The agent's rate per day is $4.41 plus 1/365 of the days off, which amounts to 29c. per day, making a total of $4.70 per day.

* The porter is on duty at the exit gate from 5.00 PM to 7.00 PM and from 12.00 Midnight to 7.00 AM watching the station, making a total of 9 hours, $3.12 plus 1/365 of the days off which amounts to 11c. per day.

3403

The cost of labor to operate the 42nd Street spur on Sundays.

2 days–3 hours	Motormen	at	$6.56	per	day	$15.58
3 days	Conductors	"	4.71	"	"	14.13
2 days	Guards	"	4.37	"	"	8.74
2 days	Agent	"	4.70	"	"	9.40
9 hours	Porter	"	3.58	"	"	3.23
	Total					$51.08

2. The total labor cost, corresponding to the classes of labor set forth in the preceding paragraph, is as follows for the fiscal year ending June 30th, 1923. 3404

Conductors	$ 681,283.22
Guards	2,057,083.74
Motormen	1,007,095.64
Hand Switch	204,300.30
Agents	873,037.43
Porters	137,318.28
Total	$4,960,118.61

The payroll of the above fiscal year also included Gatemen and Platformmen up to the time of the installation of automatic pre-payment turnstiles.

3405

Gatemen	422,880.57
Platformmen	37,819.09
Total	$460,698.65

3. The car miles and car hours made over 42nd Street branch (Manhattan Division) for the past five years (5) as follows, Fiscal Years.

Fiscal Years Ending June 30th	Car Miles	Car Hours
1919	92702	10302
1920	80393	8932
1921	70543	7838
1922	70033	7781
1923	70170	7797
Totals	383841	42650

3406

4. Three turnstiles were placed in operation at 3.10 P. M. April 3rd, 1923. The traffic reports to the Transit Commission are certainly based on the turnstile records of the people passing through these turnstiles.

5. There are no separate figures available to determine the maintenance cost or cost of material used in connection with the spur operation, as these figures are included in the general maintenance cost of the Third Avenue line.

3407

Yours very truly, J. L. Quackenbush.

3408

City's Exhibit 42 (City's Exhibit 42 for Identification)—Operating Expenses and Taxes Chargeable Against 42nd St. Elevated Spur for Each of Fiscal Years (1919 to 1923) Ended June 30th. 3409

OPERATING EXPENSES AND TAXES CHARGEABLE AGAINST THE 42ND STREET ELEVATED SPUR FOR EACH OF THE FOLLOWING FISCAL YEARS ENDED JUNE 30TH:

Cost Per Car Mile	1923 Cents	1922 Cents	1921 Cents	1920 Cents	1919 Cents
1. Maintenance of way and structure	1.87	1.85	1.84	1.69	1.47
2. Maintenance of Equipment	2.28	2.26	2.25	2.06	1.83
3. Operating of power plant	3.02	2.00	3.20	2.79	2.41
4. Injuries and damages	.40	.40	.36	.44	.40
5. General miscellaneous expenses of above	1.01	1.03	1.00	.87	.77
6. Total of above operating expenses	8.58	7.54	8.65	7.85	6.88
7. Taxes	3.42	3.66	3.32	2.95	2.85
8. Total cost per car mile for above items	12.00 Cents	11.20 Cents	11.97 Cents	10.80 Cents	9.73 Cents
9. Car miles operated on spur	70,170	70,033	70,543	80,395	92,702
10. Cost on spur for above items	$8,420.40	$7,840.39	$8,373.99	$8,682.66	$9,019.05
11. Cost of operation of cars	$27,440.00	$27,440.00	$27,440.00	$27,440.00	$27,440.00
12. Total operating cost on spur	$35,860.40	$35,280.39	$35,813.99	$36,122.66	$36,459.05

3410

Explanations:

The purpose of this statement is to show for each of the above fiscal years the operating expenses and taxes properly chargeable against the 42nd Street Elevated Spur, operated by the Interborough Rapid Transit Company, from the Grand Central to and connect with the Third Avenue Line of the Elevated System.

Such expenses and taxes chargeable to the spur are not shown directly by the accounts of the Interborough Company, and can be determined only by reasonable allocation. Five major classes of expenses (lines 1-5 inclusive, and taxes line 7), are computed on the basis of average cost per car mile for the Elevated System as a whole, applied to the number of car miles operated on the spur. The assumption is that such costs per car mile on the spur were no less than on the entire elevated system (with more exact analysis of the facts, the cost per car mile on the spur would probably appear more than on the elevated system).

The total cost per car mile for such expenses and taxes is stated in line 8; this is then multiplied by the number of car miles operated on the spur (line 9), giving the total amount chargeable to the spur for those items (line 10).

In addition to the cost of the above items (line 10) there is the principal class of operating expenses under the caption "Operation of Cars," including the wages of motormen, conductors, guards, switchmen, agents and porters. For these items an approximately correct estimate could be made for the spur without reference to the elevated system as a whole. Just prior to the discontinuance of the spur operation, these costs for the spur itself were stated at $80.40 for each week day, and $51.08 for Sundays. Assuming 300 week days per year and 65 Sundays and holidays, the annual cost is $27,440. (without allowance for materials and superintendence properly chargeable to the spur). This amount was used unchanged for each of the five years (although the cost was probably higher for most of the prior years). 3411

The total operating expenses and taxes, including both the items based on the average cost per car mile for the elevated system as a whole (line 10) and the direct cost of operating the cars (line 11) are stated in line 12, and have amounted in round figures to $35,000. a year.

The costs per car mile (lines 1-5 inclusive and line 7) were taken from the operating reports for the month of June for each year, sworn to and filed by the Interborough Rapid Transit Company with the Transit Commission of the State of New York and its predecessor commission. (The June reports give the cumulative results of operation for the entire fiscal year). The number of car miles operated on the spur is given in a letter under date of January 7, 1924, to Mr. L. Howell LaMotte, Assistant Corporation Counsel signed by J. L. Quackenbush in behalf of the Interborough Rapid Transit Company. The same letter gives the daily direct cost for operation of cars.

3412 **City's Exhibit 43 (City's Exhibit 43 for Identification)—Tickets Sold at Designated Elevated and Subway Stations at 42nd St., Years 1900 to 1923.**

TICKETS SOLD AT DESIGNATED ELEVATED AND SUBWAY STATIONS AT 42ND STREET, MANHATTAN, CITY OF NEW YORK

Year Fiscal	Grand Central "L" Spur	Third Ave. "L"	Sixth Ave. "L"	Times Square I. R. T. Subway	Times Square B. R. T. Subway	Grand Central Subway	Total
1923	1,358,383	3,683,883	6,192,182	34,678,063	19,157,072	33,137,199	98,206,782
1922	1,290,100	3,441,700	5,955,220	31,966,237	17,070,509	29,938,128	89,661,894
1921	1,470,860	3,611,920	6,504,220	29,568,260	14,574,573	29,397,748	85,127,581
1920	1,525,427	3,339,140	6,361,480	26,631,199	12,318,014	28,030,334	78,205,594
1919	1,681,817	3,020,661	6,292,026	20,579,059	10,045,639	23,581,945	65,201,147
1918	1,862,464	2,817,376	4,914,280	16,436,775	2,258,713	28,400,213	56,389,821
1917	1,825,395	2,808,331	4,819,635	17,272,086	.....	26,539,221	53,264,668
1916	1,531,904	2,703,728	4,184,515	15,174,578	.....	23,168,634	46,763,359
1915	1,351,233	2,129,773	3,738,225	14,307,694	.....	20,494,333	42,021,258
1914	1,281,111	2,187,347	4,086,449	13,664,628	.....	19,551,405	40,770,940
1913	1,053,740	2,213,440	3,922,027	13,211,957	.....	16,939,238	37,340,402
1912	1,059,957	2,274,141	3,914,295	12,709,311	.....	14,995,523	34,953,227
1911	1,060,105	2,341,685	3,840,750	11,663,025	.....	13,799,160	32,704,725
1910	1,214,089	2,149,566	3,877,775	11,275,435	.....	14,006,397	32,523,262
1909	1,090,646	1,962,092	3,560,255	10,116,897	.....	12,486,515	29,216,405
1908	1,062,351	2,038,308	3,359,414	9,118,318	.....	11,307,623	26,886,014
1907	1,085,825	2,248,086	3,253,779	7,784,967	.....	10,391,676	24,764,333
1906	996,325	2,023,829	3,014,338	6,300,138	.....	8,870,359	21,204,989
1905	1,580,802	2,086,798	3,540,913	3,641,345	.....	5,121,966	15,971,824
1904	2,273,486	2,225,515	4,757,384	.....	.....	.....	9,256,385
1903	2,078,436	1,884,301	3,945,183	.....	.....	.....	7,907,920
1902	1,681,438	1,486,482	3,745,068	.....	.....	.....	6,912,988
1901	1,472,893	1,277,636	3,296,448	.....	.....	.....	6,046,977
1900	1,413,052	1,244,178	3,137,827	.....	.....	.....	5,795,057
Totals	34,301,839	57,199,916	104,213,688	306,099,972	75,424,520	369,857,617	9,470,975,552

ANALYTICAL SUMMARY
PER CENT INCREASE IN TRAFFIC

	"L" Spur	Total at 42nd Street
1923 over 1900	—04.3	1594.6
1905 " 1900	11.2	175.6
1910 " 1905	—30.2	103.6
1915 " 1910	11.3	29.2
1920 " 1915	12.2	86.1
1923 " 1918	—37.1	74.1

NOTE: The figures were taken from the reports of the Interborough Rapid Transit Co., to the Transit Commission of the State of New York and its predecessor, the Public Service Commission of the State of New York, First District, and from said Company's records in its own offices.

Prepared by John Bauer, December 10, 1923.

City's Exhibit 44—Resolution of Board of Estimate and Apportionment Duly Adopted Nov. 23, 1923, Vesting Title. 3415

(This resolution is printed at page 89 of the record.)

City's Exhibit 45—Lease, Manhattan Railway Co. to Interborough Rapid Transit, Co., Dated Jan. 1, 1903 for 999 Years.

This Indenture, made this first day of January, One thousand nine hundred and three, between Manhattan Railway Company, hereinafter called 3416
the "Lessor," party hereto of the first part, and Interborough Rapid Transit Company, hereinafter called the "Lessee," party hereto of the second part, domestic corporations, organized under the laws of the State of New York, Witnesseth:

Whereas, the Lessor is a railroad corporation, and also is a corporation which owns or operates railroads or railroad routes within the City of New York; and

Whereas, said Lessor also owns, in fee simple or by leasehold estate, pieces and parcels of land, 3417
with the buildings and improvements thereon, situated, lying and being in the City of New York, State of New York, and also owns rolling stock, equipment, tools, machinery, implements, supplies, money, bonds, credits, securities and personal property, of all which property real, personal or mixed, schedules, with valuations of the personal property, have been or are to be prepared as of the date hereof, to such an extent as is practicable, and are to be identified by the sig-

3418 natures thereon of the Secretaries of the Lessor and of the Lessee respectively; and has also acquired and expects to acquire in future from or against owners of property abutting upon the lines of its railroads or routes, privileges, easements and rights to construct, maintain and operate its railroads now constructed or hereafter to be constructed or acquired; and

Whereas, the Lessee is a railroad corporation duly organized under and in pursuance of Chapter 565 of the Laws of 1890, known as "The Rail-
3419 road Law," and the acts amendatory thereof and supplemental thereto, and pursuant to provisions of Chapter 544 of the Laws of 1902, being an Act to Amend Chapter 4 of the Laws of 1891; and also is a corporation which owns or operates railroads or railroad routes within the City of New York; and

Whereas, the Board of Railroad Commissioners of the State or a majority of such Board, has duly consented to these presents;

Now, Therefore, the parties hereto, for and in
3420 consideration of the sum of One Dollar ($1.00) by each to the other in hand paid, the receipt wheerof is hereby acknowledges, and for and in consideration of the covenants and agreements hereinafter contained, to be kept and performed on the part of each party hereto, by and with the other, and other valuable considerations, have covenanted and agreed as follows:

The Lessor has leased and demised, and doth by these presents lease and demise to the Lessee and its successors and assigns, all its right, title and interest in and to the property hereinafter described, that is to say;

All the railroads owned or operated in the City of New York by the Lessor, and constructed or to be constructed or acquired under its charter or in its right, during the continuance of this lease, and all the railroad routes of the Lessor hereinbefore mentioned or now or hereafter acquired; together with all switches, side-tracks, sidings, connections and turn-outs belonging to or appurtenant to said railroads or routes and all extensions or branches of or from said railroads, now owned, constructed or operated, and which may hereafter be owned, constructed or operated, by 3422
the said Lessor, and all and singular the emoluments, revenues, income, rents, issues and profits of said railroads, extensions and branches, together with all the franchises, rights, powers and privileges of the Lessor now owned or hereafter acquired, to construct, acquire, maintain and operate railroads now owned or hereafter acquired by the Lessor; and also all the lands, privileges, easements, rights, and tenements above described or referred to, and all and any real estate or interest therein, privileges, easements, rights, or leasehold estates hereafter acquired, and also all 3423
cars, locomotives, engines, tools, implements, supplies, machinery, railroad equipments, power stations, electrical appliances and equipments, office furniture and office fixtures, and all privileges, easements, rights, fixtures, personalty and property, real, personal or mixed, of every nature or description, of the Lessor, now or hereafter acquired, which franchises, rights and property so leased and demised are taken by the Lessee subject to the various burdens and conditions under which they are respectively held by the Lessor; and the Lessor doth hereby assign, transfer, and set over unto the

3424 Lessee, its successors and assigns, all the benefits and rights now or hereafter arising from any and all contracts, leases or agreements which the Lessor now has or may hereafter be entitled to; provided, however, that money derived from the sale of shares of capital stock, bonds or property of the Lessor, and credits and securities, shall remain, until January first, 1906, under the control of the Lessor, and shall only be expended or applied as hereinafter provided;

Excepting from the effect of this Indenture only
3425 such of its franchises, rights and privileges as are or may be necessary to preserve its corporate existence, charter, powers or organization, and its interest in the reversion of the demised property and in the covenants, agreements and conditions of this Indenture.

This Lease includes all the right, title and interest of the Lessor during the term or existence of this Indenture in and to all the property, real, personal and mixed, of the Lessor on the date when the same takes effect, all subsequent additions, all connections, extensions and branches of
3426 its existing railroad or railroads now constructed or which may hereafter be constructed or acquired, and all leased lines connecting therewith, and all rights and franchises of the Lessor now owned or hereafter acquired, to make connections, extensions, branches and leases of other lines, and to construct maintain and operate new or other lines of railroad upon routes now owned or which may hereafter be acquired by or for the Lessor.

And subject to the provisions of this Indenture, and the control herein reserved to the Lessor until January 1st, 1906, the Lessor does hereby grant to the Lessee the control of the expenditures of

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any moneys belonging to the Lessor at the time of the taking over of the property of the Lessor under this lease, which are in the treasury of the Lessor, or to which the Lessor is or may be entitled, and the control of all rights of action for the collection of money or for the enforcement of all rights of action for the collection of money.

To have and to hold the said railroads, railroad routes and other property, real, personal and mixed, and appurtenances unto the said Lessee and its successors and assigns for the full term of nine hundred and ninety-nine years from the 3428
date of the organization of the said Lessor, to wit: November first, One thousand eight hundred and seventy-five (A. D. 1875), or so long as the Lessee and its successors shall continue to exist as a corporation and be capable of exercising all the functions herein stipulated on its behalf; the Lessee yielding and paying unto the Lessor, its successors and assigns, the yearly rent of Ten thousand dollars ($10,000), payable semi-annually on the first days of October and April, during the said term, and keeping and performing all and singular the covenants and agreements hereinafter 3429
mentioned to be by the said Lessee kept and performed.

Article First.—It is covenanted and agreed that the authorized capital stock of the Lessor at the time this lease takes effect shall be $60,000,000, of which $55,200,000 shall then be outstanding, and that after April 1st, 1906, the balance of new stock to the amount of $4,800,000 will be issued by the Lessor if permitted by law, and may be sold by the Lessee, but not otherwise than in the market at public or private sale, for the best price obtainable.

3430 Article Second.—It is further mutually covenanted and agreed that all moneys derived from the sale of shares of capital stock, bonds or property, real or personal, of the Lessor, and from any credits or securities, and from any excess of the amounts heretofore charged against income account for the purpose of meeting taxes, over and above the amounts necessary to liquidate such taxes with interest and penalties, shall be used, applied and expended only for one or more of the following purposes, to wit, the extinguishment
3431 of claims of owners of property abutting upon the railroads and railroad routes of the Lessor; the acquisition of the right to construct, maintain and operate the railroads of the Lessor upon said routes, and any necessary expenses connected therewith; making payments from time to time upon present and outstanding contracts of the Lessor other than those connected with operating expenses, restoration to income account of all moneys heretofore charged in operating expenses for the purpose of paying accrued taxes, and, during the pendency of litigations, actually ap-
3432 plied to purchase of property or to betterments; to complete the construction, alteration and equipment of the said railroads for operation by electrical motive power, and in payment of the cost of additions, improvements, extensions, branches and equipments of the said railroads and properties of the Lessor, other than those necessary to keep said railroads and properties in good condition and repair, and other than those necessary to preserve and procure efficiency in the operation of said railroad or railroads, which said additions, improvements, extensions, branches and equipments, and all other property, real, personal

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or mixed, paid for out of the proceeds of the sale of shares of capital stock, bonds or property of the Lessor, shall be the property of the Lessor, provided, that, until January 1st, 1906, and not afterwards, all the moneys, credits and securities aforesaid shall remain under the control of the Lessor and may be, and, at the request of the Lessee, shall be expended, paid or applied by the Lessor for or to the purposes aforesaid, and after January 1st, 1906, the same shall be expended, paid or applied for such purposes, and no others, by the Lessee, provided, further, that in all cases 3434 in which it be essential, the consent of the Trustees of any mortgage upon any of the property herein referred to, be first had and obtained.

It is agreed that after January 1st, 1906, the Lessee, within a reasonable time after the close of each fiscal year, shall render to the Lessor an itemized account of the aforesaid treasury assets on hand at the close of such fiscal year, and of the credits and debits pertaining thereto during the said preceding fiscal year.

It is agreed that all reasonable expenses incident to the issue, sale and disposition of shares 3435 of capital stock, bonds and property of the Lessor, shall be paid out of such proceeds of sale as can be so applied, otherwise by the Lessee.

Article Third.—The Lessor covenants and agrees that the Lessee shall have all the right of the Lessor from time to time to sell and dispose of all cars, rolling stock, machinery, equipments and other personal property which shall not be required for further use in the construction, maintenance and operation of said railroads, and to apply the proceeds realized upon any such sale

3436 to the purchase of such machinery, real or personal property, and the construction of such additions, improvements, extensions, branches and equipments of the said railroads and properties of the Lessor, other than those necessary to keep said railroads and properties in good condition and repair, and other than those necessary to preserve or secure efficiency in the operation of said railroad or railroads, which said machinery, real or personal property, additions, improvements, extensions, branches, and equipments, shall be the
3437 property of the Lessor, provided that until January first, 1906, the Lessor shall have the right and at the request of the Lessee shall sell property and apply the proceeds as in this Article hereinbefore provided, the necessary consent of any Trustee of any mortgage having first been obtained.

Article Fourth.—The Lessor further covenants and agrees that it will, and the Lessee covenants and agrees that it may, at least six months before the date fixed for the redemption or payment of any bonds issued by it and payment of interest on which shall have been assumed by said Lessee,
3438 which are not provided for in the Consolidated Mortgage of the Lessor to be taken up by the issue of bonds secured by said mortgage, including among others, bonds issued under said Consolidated Mortgage, either extend the time of payment of any such bonds falling due at the best rate of interest obtainable and, if deemed advisable by the Lessor, issue new coupon sheets for such extended bonds, or issue, at the highest price obtainable therefor, a new series of bonds to refund the same secured by mortgage or mortgages covering its franchises, rights, privileges and property,

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which said mortgage or mortgages shall be for an amount equal to but not greater than the principal of the bonds to be redeemed and paid, and which said bonds shall bear the lowest rates of interest at which the same can be sold or disposed of at not less than par.

The Lessor further covenants and agrees that it will apply the proceeds realized upon the sale of said extended or refunding bonds to the payment and redemption of the bonds falling due, and not otherwise, and that any surplus of the proceeds realized on any such issue of such bonds shall be 3440
paid to the Lessee, to be by it applied to the purposes set forth in Article Second of this lease.

It is covenanted and agreed that any mortgage hereafter issued by the Lessor to secure bonds issued for extending or refunding those secured by said Consolidated Mortgage, no matter how often extended or refunded, shall be a lien upon the mortgaged property prior to this lease, and that such priority of lien shall attach to every mortgage securing bonds that represents the debt at any time secured by said Consolidated Mortgage, no matter how often replaced or renewed. 3441

The Lessor further covenants and agrees that it will on or after the first day of July, 1908, at the request of the Lessee, issue at the highest price obtainable therefor, a new series of bonds bearing four per centum interest per annum, payable semi-annually, to the amount of principal of $5,409,000, secured by a mortgage covering, if deemed advisable by the Lessee, either a portion or the whole of its franchises, rights, privileges, and property, and it is agreed that the proceeds of the sale of such bonds shall be applied to the purposes set forth in Article Second hereof.

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All expenses incident to the making of any such mortgage, and the issue, sale and disposition of any such bonds, under the provisions of this Article Fourth, shall be borne and paid out of such proceeds of sale as can be so applied otherwise by the Lessee.

Article Fifth.—The Lessor further covenants and agrees that whenever required by the Lessee during the continuance of this lease it will do and perform every corporate act which may be necessary, useful or appropriate to secure to the Lessee
3434 or its successors the full enjoyment of the railroads, property and franchises hereby demised or intended to be, and any and all extensions, branches and other railroads hereafter constructed or acquired, and which shall become a part of the demised premises; that it will use every effort to retain and preserve its corporate existence and organization during the continuance of this lease, and will take any and all proceedings authorized by law for the extension of its charter or charters, and for the purpose of acquiring by the exercise of the right of eminent domain, any real property
3444 or interest therein which the Lessor shall be requested to acquire by the Lessee, and that it will endeavor to obtain the right to construct such extensions of the route of its railroads, such additional tracks and railroad facilities, and such branch or branches therefrom, as shall be approved by the Lessor and Lessee, or required by law, and to that end will take such proceedings as may be authorized by law. The expense of doing all acts to be done by the Lessor under this Article Fifth, shall be borne and paid by the Lessee except as provided in Article Second of these presents.

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Article Sixth.—The Lessee hereby leases and hires from the Lessor the said railroad and railroads, franchises, rights, privileges, easements, real estate and property, hereinbefore mentioned, described and demised, for and during said term of nine hundred and ninety-nine years aforesaid, and upon the terms and conditions in this lease expressed, and the Lessee hereby covenants and agrees to pay to the Lessor and hereby guarantees to each owner of record of shares of capital stock of the Lessor, dividends, as rent, as hereinafter provided, for the term of two years and nine 3446
months from the 31st day of March, 1903. The Lessor hereby covenants and agrees, that prior to the date of payment of each of the instalments of rent provided for in this article, it will declare a dividend equal to such instalment, payable upon the date of payment of such instalment, and after or simultaneously with such declaration of dividend, will close its transfer books of stock for a reasonable time prior to such date of payment, and that such dividend shall be payable to the owner of record of its stock, who shall be such, on the date of closing of its transfer books afore- 3447
said. The said dividend rentals payable to all such owners of record for each of the first two years and the remaining nine months comprised in said two years and nine months shall be an amount equal in the aggregate to the net earnings of the Lessor, for each of said three periods respectively, but shall not exceed seven per centum (7%) per annum upon the outstanding capital stock of the Lessor; and shall be not less than six per centum (6%) per annum upon such stock; said net earnings shall, among other things, include all interest earned by the Lessor, and shall be ascertained by

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the system of accounting heretofore employed by the Lessor, and by deducting from the gross earnings, among other things, operating expenses, taxes accrued and proportionately chargeable to the period aforesaid, interest upon the bonds described or mentioned in Article Seventh of this Lease; repairs, replacements, expenses of litigation and all judgments recovered, except judgments recovered by owners or parties otherwise interested in property abutting upon the lines of railroad of the Lessor, for damages to said abut-

3449 ting property, or the rental value thereof, arising from the construction, maintenance or operation of the said railroads and their interference with easements of light, air and access, and the expenses of the Lessor in litigations connected therewith.

Proper books of account according to the system of accounting heretofore employed by the Lessor shall be kept by the Lessee until January first, 1906, showing the gross earnings, and an itemized account of the proper and reasonable charges against the same, which shall at all times be open to the inspection of the officers and agents of the

3450 Lessor.

No reduction of the guaranteed annual dividend rental or in the term of years of this lease shall be made without the unanimous consent of the shareholders of record of the Lessor; provided, however, that nothing herein contained shall otherwise limit the lawful powers of the Board of Directors and shareholders of the Lessor to deal with the subject-matter of this lease and its provisions.

From and after the expiration of said two years and nine months, and from January first, 1906, the Lessee hereby covenants and agrees to pay to the

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Lessor, and guarantees to each owner of record of the shares of capital stock of the Lessor, as rent, an annual dividend of seven per centum (7%) on his holding of the capital stock of the Lessor.

The Lessee hereby covenants and agrees, that it will each and every year during the term hereby granted, beginning with the first day of April, 1903, pay to the Lessor as rent for the demised property, and hereby guarantees to the respective owners of record of the shares of the Lessor, the said annual dividends free of all charges, in quarter-yearly payments on the first days of January, April, July and October in each year, which after January 1st, 1906, shall be equal quarterly payments; the first of such payments to be made on the first day of July, 1903; and the Lessee will from time to time execute in proper form a guarantee to the above effect, printed or engraved upon the certificates of stock of the Lessor; and as such stock certificates are surrendered for cancellation and issuance of new certificates in place thereof, will from time to time, upon request of the holder renew such guarantee upon all such new certificates.

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The form of such Guarantee shall be as follows:

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"Dividends amounting to six per cent. per annum and an additional amount, if earned, not exceeding one per cent. per annum, until January first, 1906, and after that date, dividends amounting to seven (7) per cent. per annum, upon the par value of the outstanding capital stock of the Manhattan Railway Company are guaranteed, and will be paid by the undersigned, in accordance with the terms and provisions of a certain Indenture made between the Manhattan Railway Company and the undersigned, dated the first day of January, 1903.

Interborough Rapid Transit Company; by Treasurer."

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Payment of dividends as above provided by the Lessee to the stockholders of the Lessor shall constitute payment of rent, in compliance with the foregoing covenants to pay the same to the Lessor.

Article Seventh.—The Lessee hereby assumes and covenants and agrees to pay to the Lessor as rent, as the same respectively becomes due, the interest on the outstanding Debenture Bonds of the New York Elevated Railroad Company, now merged in and with the Lessor, of which One million dollars ($1,000,000) of principal are now out-
3455 standing, and also the interest on the First Mortgage Bonds of the Metropolitan Elevated Railway Company, now merged in and with the Lessor, of which there are outstanding of principal Ten million eight hundred and eighteen thousand dollars ($10,818,000), and also the interest on the Consolidated Mortgage Four per Cent. Bonds of the Lessor, of which there are now outstanding of principal twenty-eight millions and sixty-five thousand dollars ($28,065,000); and also the interest on all bonds that may hereafter be issued by the Lessor in extension or substitution of or for the purpose
3456 of retiring any of the aforesaid or any renewal Mortgage Bonds; and also the interest on all the bonds of the Lessor which may hereafter be issued in pursuance of the terms of the Consolidated Mortgage of the Lessor; and also the interest on all bonds of the Lessor which may hereafter be issued either as an original issue or as extension or renewal bonds, as provided by the terms of this lease; and the Lessee further covenants and agrees to keep the Lessor safe and harmless at all times from all claims and demands against it for interest arising from or under the said bonds, or any of them.

Payment of any of such interest by the Lessee to the bondholders of the Lessor shall constitute payment of rent, in compliance with the foregoing covenants to pay the same to the Lessor.

The Lessee hereby further covenants and agrees to keep and perform all the conditions, covenants and agreements that may be contained in all or any of the aforesaid mortgages to be kept and performed by the Lessor, except the agreement to pay the principal of the bonds respectively secured thereby. For all of the payments in this lease provided on the part of the Lessee, well and truly to 3458
be made during the term by this lease demised, the said Lessee hereby binds itself and its successor or successors firmly by these presents.

Article Eighth.—The railroads hereby leased shall be deemed to have been operated from twelve o'clock and one second on the morning of the first day of April in the year One thousand nine hundred and three, by the Lessee, and all such operation from and after that time shall be for the account of the said Lessee; provided, however, to the end that the present plans of improvement and financial administration of the leased 3459
property may be completed, the present Vice-President, Treasurer and Auditor of the Lessor shall be appointed as the Executive Officer, Treasurer and Auditor, respectively, of the Lessee with respect to the leased property, until January first, 1906, and in the event of the inability of any of such officers to act, by resignation or otherwise, his successor shall be elected by the Lessee, with the approval of the Lessor.

Article Ninth.—The Lessee covenants and agrees, at its own proper cost and expense, to

3460 maintain, operate and run the demised railroads and property during the said term in the same manner as the Lessor is now or shall at any time hereafter be required or authorized by law to do; and shall and will keep all insurable property insured in reasonable amounts and rebuild all buildings and replace all property destroyed or deteriorated by fire or otherwise, to such an extent as to be unfit for use; and shall and will maintain, preserve and keep the railways and property hereby demised, including all property
3461 hereafter acquired, and every part thereof, in thorough repair, working order and safe and efficient condition, and supplied with rolling stock and equipment, so that the business of the said demised railways shall be preserved, encouraged and developed, the business thereof to be done with safety and expedition, the public be accommodated in respect thereto, with all practicable convenience and facilities, and the future growth of such business as the same may arise or be reasonably anticipated be fully provided for and secured.

3462 The Lessee further covenants and agrees, at the expiration or termination of this lease for any cause, to return and deliver the said railroad and railroads, real estate, and properties by this lease demised, including among other things, all property, additions, improvements and equipments which shall be furnished, constructed or completed out of the proceeds of sale of the stock, bonds or property of the Lessor, to the Lessor in as good order, condition and repair as they were at the date this lease takes effect, or at the date when the same came into the possession of the Lessee, and to surrender said franchises, rights

and privileges, easements and properties unimpaired by any act of the Lessee; excepting, however, all property of the Lessor sold pursuant to the terms hereof, the proceeds of which shall have been applied as herein provided.

The Lessee further covenants and agrees that it will at all times during the continuance of this lease, at its own expense, keep the said rolling stock, and tools, equipment, machinery and implements necessary for the operation of the road, in good order, condition and repair, and will, as the same shall be worn out and rendered unser- 3464
viceable, replace the same at its own expense, so that the said railroad and railroads shall always be kept, maintained and equipped in good and safe condition and effective working order.

The Lessee further covenants and agrees that it will at all times during the continuance of this lease, at its own expense, comply with all lawful requirements with respect to the construction, maintenance and operation of said railroads, extensions or branches thereof.

Article Tenth.—The Lessee covenants and agrees, at its own proper cost, from time to time, 3465
and whenever necessary for the use of the Lessor, to make out and furnish to said Lessor in duplicate any and all reports and statements which the latter shall or may hereafter be required by law to make and file; and to do and perform any and every act which the Lessor may from time to time be required by Law to do and perform during the term of this lease.

Article Eleventh.—The Lessee covenants and agrees that, in addition to the rentals herein elsewhere provided, it will pay and discharge as rent, as and when the same have or may become due,

3466 any and all taxes, assessments, license fees, water rents, duties, imposts, dues and charges whatsoever, whether ordinary or extraordinary, which previously to this lease have been or hereafter during the said term shall be levied, confirmed, assessed or imposed upon the Lessor, its capital, or shares of capital stock, or dividends, or upon the demised railroad or railroads, premises, real estate, personal property, franchises, easements, or any part thereof, or the business, earnings or income of the Lessor, or for the use or enjoyment
3467 thereof, by the United States, State, municipal or other lawful authority; provided, always, that the Lessee shall have the right before making such payment to contest the validity, legality, or amount of any such tax, assessment, license fee, water rents, duty, or charge upon any reasonable ground; and in case the same shall be contested as aforesaid, the time occupied in such contest shall not be deemed a part of a reasonable time within which the Lessee is required to make such payment aforesaid. Should the Lessee fail to make any such payment aforesaid within the time
3468 herein required, then the Lessor may, after the expiration of said time, pay the same, with all accrued penalties, interest, costs and other charges connected therewith, and the Lessee agrees to repay as rent to the Lessor on demand the amount so paid.

The Lessee further covenants and agrees to pay as rent all rentals accruing or becoming payable during the continuance of this lease, under the terms of any contract or lease then existing between the Lessor and any person or corporation for the use of any real estate or property leased by the Lessor.

Article Twelfth.—Possession of the demised railways and premises shall be given by the Lessor to the Lessee at twelve o'clock and one second on the morning of the first day of April, nineteen hundred and three, and upon delivery of such possession, the Lessor shall transfer and deliver to the Lessee, for use upon or in connection with the said demised railways and premises, all moneys belonging to income account, (except moneys necessary to pay dividends previously declared), rolling stock, equipment, machinery, tools, implements, furniture, fuel, material or other railroad supplies belonging to the Lessor which shall have been procured for the use of the said railways. 3470

The Lessee covenants and agrees to take over the leased property as a going concern, and agrees to pay all operating expenses due or to become due at or after the time of taking possession.

The Lessee shall at all times during this lease have the full and exclusive right to manage, use and control the demised property, and shall have, use and enjoy all the rights, powers and authority of the Lessor in that behalf, and all rights, powers, easements and privileges now possessed or which may hereafter be acquired by the Lessor necessary or convenient to the construction, maintenance, use, operation, possession and enjoyment of said railroad or railroads and any and all connections, extensions and branches thereof, which can or may be lawfully exercised and enjoyed under its charter and the laws applicable thereto, in, about or in connection with said demised property and in the maintenance and operation thereof. 3471

The Lessee may from time to time, in its discretion change, rebuild or duplicate the location or

character of the whole or any part of any present or future line of railroad of the Lessor or change the motive power now used, or hereafter used, upon any such line, or the road bed or structure of any such line, the consent of the Lessor having first been obtained, which consent the Lessor hereby agrees to give, provided the proposed action of the Lessee be reasonable and lawful.

Article Thirteenth.—The Lessee further covenants and agrees that it will proceed faithfully and diligently with the work of converting the said
3473 railroad and railroads into an electric railroad, and making all other improvements now contracted for, according to the present plans and contracts of the Lessor, but without assuming any liability under any of such contracts, and the Lessor covenants that it will facilitate and further such work by every means in its power, and will provide the funds therefor, by the sale of its capital stock, bonds or other property, real or personal, according to the provisions of Article Second hereof.

Article Fourteenth.—The Lessee further cove-
3474 nants and agrees that at the expiration of this lease or upon any sooner termination thereof, all property, extensions, branches, additions, improvements and equipments constructed, made or furnished by the Lessee out of its own funds to the said railroad or railroads otherwise than in compliance with the provisions of this Indenture, shall remain for use upon or as part of said demised property, and shall be and become the property of the Lessor upon the payment by the Lessor of the reasonable value thereof.

Article Fifteenth.—The Lessee further covenants and agrees upon the expiration or any sooner

termination of this lease, to surrender, transfer and deliver to the Lessor, all tools, machinery, materials and supplies on hand for use in the construction, maintenance or operation of said railroads of value at least equal to that of such property delivered to the Lessee by the Lessor, and upon payment by the Lessor of the amount, if any, that the value of such property then delivered may, exceed the value of such property delivered at the date this lease takes effect. And the Lessee further covenants and agrees at the expiration of this lease or any sooner termination 3476
thereof, that it will execute and deliver to the Lessor a good and sufficient deed conveying to the Lessor any real estate acquired and paid for by the Lessee for use in connection with the construction, maintenance or operation of said railroad or railroads and property, upon payment by the Lessor of the reasonable value thereof.

Article Sixteenth.—The Lessee further covenants and agrees that the Lessor, its officers and its duly authorized committee or agent may at all times during the term by this lease demised, enter in and upon and have free access to the railroads 3477
and properties by this lease granted and demised, that it will keep full, true and correct books of account, to which books, and to all contracts, vouchers, and agreements, the Lessor's officers, committee or agent aforesaid shall have free access at all reasonable times, and that all deeds, muniments of title, agreements, and other papers, relating to settlements with abutting owners, papers evidencing franchises and charters, stock books, transfer books, and the seal of the Lessor shall remain in the custody of the Lessor, whose

3478 approval until January first, 1906, shall be necessary to the purchase of any real estate or interests therein with its money, and to all settlements with abutting property owners, and that it (the Lessee) shall have access to such papers at all reasonable times, and that said Lessee will furnish to such officers, committee or agent every facility to examine into the condition of the said railroads and properties and the system and manner of operating said railroads, and will pay all expenses incident to an examination and report upon the con-
3479 dition of the railroads and equipment of the Lessor, to be made by an expert or experts of its selection not oftener than once in three years, and will when and as required properly mark for identification all rolling stock of the Lessor and all replacements thereof, and will also from time to time pay all expenses of transfer and registration of stock, and of printing or engraving stock certificates.

Article Seventeenth.—The Lessee further covenants and agrees that it will at the expiration or any sooner termination of this lease for any cause,
3480 transfer, deliver and return to the Lessor, moneys belonging to income account, equal in amount to such moneys received at the inception of this lease, also rolling stock, equipment, power stations, electrical appliances and equipments, implements, furniture, fuel, office furniture and office fixtures, and all other property of like kind or nature then owned or possessed by it for use in the construction, maintenance and operation of said demised railroad and railroads, and the said property so returned shall be equal in quantity and value to similar property received by it at any time from

the Lessor under the terms of this lease; excepting, however, all property sold pursuant to the terms hereof the proceeds whereof shall have been applied in accordance with the provisions of this lease.

Article Eighteenth.—The Lessee further covenants and agrees to hold, save and keep harmless and indemnify the Lessor from and against the costs and expenses of the defense of any and all actions, legal or equitable, or special proceedings, involving the validity of this lease, or the validity of the franchises, rights or easements of the Lessor, 3182
or the title of the Lessor to any real estate, property or premises covered by the terms of this lease; and further agrees to notify the Lessor in writing of the commencement of any such action or proceeding against the Lessee involving like questions, and to allow the Lessor to interplead therein without objection and to assist it in the effort to do so; and further to hold, save and keep harmless and indemnify the Lessor from and against the costs and expenses of the defense of any and all actions, legal or equitable, or special proceedings, which shall be pending against the 3483
Lessor on the date this lease takes effect, or which may hereafter, during the said term or the continuance of this lease, be brought against the Lessor for injuries or damages to persons or property in the construction, maintenance or operation of said railroads, or for causing the death of any person, and from and against any judgment or decree of injunction or other nature existing against the Lessor upon causes of action referred to in this Article on the date this lease takes effect, or at any time thereafter during the continuance

3484 of this lease; also from and against the costs and expenses of any such action or proceeding upon any other cause of action now pending or which may be hereafter brought by or against the Lessor and against any judgment or decree of injunction or any other nature rendered in any of said actions or proceedings.

And the Lessee further covenants and agrees to hold, save and keep harmless and indemnify the Lessor from and against the expenses and costs of the defense of any such action or proceeding 3485 which shall be pending at the date of the expiration or any sooner termination of this lease, or which shall thereafter be brought against the Lessor or the Lessee for injuries or damages to persons or property in the construction, maintenance or operation of said railroads during the continuance of this lease, or for causing the death of any person, and from and against any judgments or decrees of injunction or any other nature that may be rendered in any such actions or proceedings, less any amounts which shall have been paid by the Lessee, under or by reason of the pre- 3486 ceding indemnity clause, upon causes of action of a character referred to in this Article arising prior to the date of this lease; provided, however, that the Lessor or Lessee shall be at liberty to appropriate as provided in Article Second hereof, out of and from any moneys derived from the sale of shares of capital stock, bonds or property of the Lessor, whether on hand on the date the lease takes effect or subsequently received, amounts necessary to pay and discharge any and all judgments that may have been or shall be recovered for injuries or damages to property abutting upon any of the lines of railroad or railroad

routes of the Lessor, or to the rental value thereof, and also all sums of money that may be necessary or advisable to be paid pursuant to decrees of injunction or any other nature already obtained or hereafter obtained by owners of such abutting property or for the purpose of acquiring either by negotiation, settlement of action or claims or by condemnation or other proceedings from the owners of such abutting property, the right to construct, maintain and operate any of the railroads of the Lessor, together with the costs and expenses thereof, and of litigating the claims of any such 3488
alleged owners, and all such necessary amounts over and above those referred to in said Article Second shall be furnished and paid by the Lessee.

Article Nineteenth.—The Lessee further covenants and agrees to deposit, or cause to be deposited, with the Guaranty Trust Company of New York as Trustee, or such company or companies, as may be designated as Trustee or Trustees by the Lessor and Lessee, prior to the date of delivery of possession thereunder, the sum of four million dollars ($4,000,000) as a guarantee and security for the performance by it of each and 3489
every covenant and agreement contained in this lease on its part to be kept and performed, which sum of four million dollars ($4,000,000) shall be held or invested upon such terms or in such manner as shall be agreed upon by the Lessor and the Lessee, and all of the securities and mortgages in which any part of such fund may be invested shall be deposited with the said trustee or trustees.

It is further covenanted and agreed that if the Lessee shall not at the time be in default in the performance of any of its covenants or agreements in this lease contained, the said sum of

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$4,000,000, and the securities and mortgages in which any part of such fund may be invested may be delivered by the Trustee to the Lessee upon its demand in writing when, and not until, the said Lessee for five years next preceding the date of such demand shall have regularly and punctually paid all principal and interest due on all its own mortgage indebtedness and in addition thereto for five years next preceding the date of such demand, shall have regularly and punctually paid dividends upon all its own outstanding capital stock at the

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rate of not less than 4% per annum, provided that at the time of the termination of the existing lease to the Lessee from the City of New York and of any renewal thereof the Lessee shall renew the deposit of $4,000,000 herein provided for upon the same conditions herein stated, unless said deposit shall then exist.

The securities and mortgages in which said guarantee fund is invested may from time to time be changed with the consent of the Lessor and the Lessee, and the said Lessee covenants and agrees, upon the request in writing of said Lessor, whenever the market value of any of said securities

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and mortgages shall have so depreciated as to diminish said guarantee fund by such depreciation below four million dollars ($4,000,000), to make good such diminution by the deposit of cash or securities approved by the Lessor, or to substitute securities or mortgages approved by the Lessor, in place of the depreciated securities and mortgages, and in the event that said fund has been diminished by payments therefrom, to deliver to the Trustee, either cash or other securities and mortgages approved by the Lessor, which shall be of a market value sufficient to restore said fund

to four million dollars ($4,000,000) within ninety days after being requested as aforesaid in writing so to do.

Article Twentieth.—It is mutually covenanted and agreed between the Lessor and Lessee that the interest received upon said four million dollars ($4,000,000) shall be paid by the Trustee or Trustees to the Lessee as the same shall from time to time accrue and be collected, until such time as the Trustee or Trustees shall have been notified in writing by the Lessor that the said Lessee is in default in the payment of any rent reserved in this lease, or any part thereof, or is in default in making any payment on its part agreed or provided or required to be made by any provision of this lease, or in the performance of any covenant and agreement by said Lessor to be kept and performed, requiring the expenditure of money. 3494

When the Lessee shall be so in default as aforesaid, then the said Trustee or Trustees, upon the request in writing of the said Lessor, and without any further action of the Lessee, shall from time to time apply the interest of the said four million dollars ($4,000,000), as the same shall accrue and be collected, and the principal, of the said guarantee fund, or so much thereof as may be necessary, to the payment of any amount necessary to be paid by the Lessee in performance of its covenants and agreements herein contained, as the same becomes due, and to that end the Trustee or Trustees may, if necessary, sell said securities at public or private sale, and convert them into money. 3495

Article Twenty-first.—The Lessee further covenants and agrees that in case of default by it in

3496 the payment of the cash or dividend rentals in this lease reserved and agreed to be paid, and if said rentals, or any part thereof, shall remain unpaid for the space of ninety days from and after the time when they shall become due and payable, or if the said Lessee shall be in default in the performances of any of the covenants or agreements in this lease contained and on its part to be kept and performed as aforesaid, and such default shall continue for the period of ninety days after notice and demand of performance by the Lessee, given 3497 in writing by the Lessor to the Lessee, or if the Lessee shall fail or refuse to comply with any decision of arbitrators appointed as herein provided, for sixty days after service of notice of such decision upon it, then, and in any of said events, the term of this lease created, granted and demised shall at the option of the said Lessor expire and cease and determine, and the Lessor shall have the right to enter upon and take possession of all and singular the property by this lease granted and demised, and the same have and possess and enjoy as of its former estate, and without such entry may recover possession thereof in the 3498 manner provided by statute, by summary proceedings; it being covenanted and agreed that the term hereby granted shall expire after continued default as aforesaid, at the election of the Lessor and upon written notice of such election being served on the Lessee, and that all right of any further demand or re-entry other than that above specifically referred to is hereby waived by the Lessee. The foregoing remedies are cumulative and shall not be construed to take away or abridge any other remedy, or right existing by law, or under any other provision of this Lease.

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Article Twenty-second.—It is mutually covenanted and agreed between the parties hereto that the Trustee or Trustees holding said guarantee fund may from time to time be changed by the consent of the Lessor and Lessee, and that in case said Trustee, or any of such Trustees, shall be dissolved or cease to exist, or refuse or become for any cause incapable to act, and the Lessor and Lessee shall be unable to agree upon a successor in the trust, that then and in that event either party hereto, upon eight days' notice to the other, may apply to the Supreme Court for the appointment 3500
of a successor to such Trustee or Trustees with like powers and duties. The compensation of the Trustees shall be fixed and be paid by the Lessee and the Lessee may, with the consent of the Lessor, agree with any Trustee with respect to the liability of any Trustee and in respect to other proper details of the trust aforesaid.

Article Twenty-third.—It is mutually covenanted and agreed between the Lessor and Lessee that no waiver of any breach or default of the other by either shall extend to or be taken to affect any subsequent default or to impair the rights arising 3501
thereunder unless such subsequent breach or default shall itself be waived.

Article Twenty-fourth.—The Lessee further covenants and agrees that nothing in this lease contained is intended or shall be construed as authorizing the Lessee to increase the indebtedness of the Lessor, or to mortgage or create any lien upon the railroad or railroads, franchises and property by this lease demised without consent of the Lessor, and it is covenanted and agreed that the Lessor will at the request of the Lessee, from

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time to time, execute and deliver to the Lessee for issue for new mileage and sale at not less than par and at the best price obtainable, bonds secured by the Consolidated Mortgage of the Lessor, whose proceeds shall be used only in accordance with its terms.

Article Twenty-fifth.—It is mutually covenanted and agreed between the Lessor and Lessee that if the continued use of any real or personal estate included in or covered by the terms of this lease, or replacements thereof, shall not be necessary or

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required for the construction, maintenance or operation of said railroad or railroads, extensions or branches, then in that event, the Lessor, prior to January first, 1906, may, and after that date at the request of the Lessee shall, sell and dispose of said real or personal estate, and the proceeds realized therefrom may or shall be expended for the same purposes and under the same conditions as in the Second Article of this lease are provided for the expenditure of the proceeds of the sale of stock, bonds and property of the Lessor. Provided, further, that in all cases in which it be es-

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sential, the consent of the Trustee of any mortgage upon any of the property herein referred to, be first had and obtained.

Article Twenty-sixth.—It is further mutually covenanted and agreed between the Lessor and Lessee that in case of any disagreement between them concerning the performance of any of the conditions, covenants and stipulations in this lease contained on the part of the other party to be kept and performed, or concerning their respective rights, duties and obligations under the provisions

of this lease, such disagreement shall be submitted to arbitration as follows:

In case either the Lessor or Lessee shall desire the appointment of arbitrators and arbitration, the party so desiring the appointment of arbitrators shall state to the other in writing the point or points of difference to be submitted to arbitration, and shall within ten days thereafter select an arbitrator to act upon its behalf, and notify the other party in writing thereof, and thereupon said other party shall within ten days thereafter select its arbitrator and notify the party demanding said 3506
arbitration of its selection. The arbitrators thus selected shall, within five days thereafter, meet, and may adjourn from time to time, and after hearing the respective parties and taking evidence, which shall be committed to writing shall, within ten days after the last hearing, render their award in writing, and their decision shall be binding and conclusive upon the Lessor and Lessee. If the arbitrators so selected are unable to agree, they shall, within fifteen days after their last hearing, select a third arbitrator, to whom all the evidence taken shall be submitted, with such further evidence as 3507
either party may give, and after such further hearing as the arbitrators or a majority of them shall permit, the decision of a majority of the three shall be binding and conclusive upon the Lessor and Lessee. If the two arbitrators first chosen cannot agree upon the selection of a third arbitrator, then such arbitrator may be appointed by any person selected by the Lessor and the Lessee for that purpose. If the Lessor and the Lessee cannot agree upon a person to select said third arbitrator, then either of them may, upon a notice of eight days to the other, apply to any judge of the Su-

3508 preme Court in the First Department to appoint a third arbitrator. If, upon notificaton, either party hereto shall fail, within the time designated, to select an arbitrator, as required by the terms hereof, then, in that event, the arbitrator appointed by the other party shall have the right to proceed and fully determine the matters submitted, and render his decision and award in writing, which award and decision when made in writing and served upon either party by the other shall be binding and conclusive upon the Lessor and Les-
3509 see. Either party against whom the arbitrators report shall have sixty days within which to comply with the decision of said arbitrators, and said arbitrators shall have power for good cause shown from time to time to extend the time for such compliance for a reasonable time, upon such party giving security approved by the arbitrators that it would comply with the requirements of the award.

Article Twenty-seventh.—It is mutually covenanted and agreed between the Lessor and Lessee that this lease shall not be binding or valid as to either of the parties hereto, nor shall this lease go
3510 into effect nor shall the Lessee be entitled to enter into possession of the premises and property by this lease demised until said four million dollars ($4,000,000) shall have been actually deposited either in cash or in securities, or both, pursuant to the terms of this lease, with said Guaranty Trust Company of New York, or company or companies designated by said Lessor and Lessee, nor until a certificate of said Guaranty Trust Company or such companies to that effect is endorsed hereon or attached hereto, which certificate shall be duly executed by said Trust Company or companies

under its or their corporate seals, and shall state that said four million dollars ($4,000,000) or such portion thereof as they respectively hold, is held upon the trusts and subject to the term, covenants and stipulations and conditions in this lease contained in respect thereto.

Nothing herein contained shall prevent the delivery by the Lessor to the Lessee of this lease and of possession of the hereby demised premises at any time prior to the 1st day of April, 1903, which may be agreed upon by the Board of Directors of the respective parties, and in the event that any 3512
such delivery should be had, the property shall be deemed to have been operated for the account of the Lessee from twelve o'clock and one second of the morning of January 1st, 1903, from which date the rental dividends shall accrue at the rate provided for the quarter commencing April 1st, 1903; and all the other provisions of this lease with respect to payment of rent shall take effect as of said January 1st, 1903, and in every other respect said lease shall be effective from the date of said delivery of possession of the demised premises and wherever in this lease its date is referred to, the 3513
same shall be construed to mean the date of delivery of possession of the demised premises.

Article Twenty-eighth.—The Lessor hereby covenants and agrees that it shall and will, at any time when requested by the Lessee or its successors, execute, acknowledge and deliver to it or its successors, at their proper cost and expense, any and all such other or further instruments and assurances in the law for the better granting, demising and leasing of all its right, title and interest in and to said railways and premises to the said Lessee

and its successors, upon and subject to all and singular the rents, covenants, agreements and conditions hereinbefore reserved and mentioned, as by the said Lessee or its successors, or by its or their counsel learned in the law, shall reasonably be advised, devised or required; and the Lessee covenants and agrees to and with the Lessor, its successors and assigns, that it and its successors shall and will, whenever thereunto requested by the Lessor, its successors or assigns, execute, acknowledge and deliver any and all instruments for
3515 the more effectually assuring unto the Lessor, its successors or assigns, the payment of the cash rentals and dividends hereinbefore reserved or agreed to be paid, and the performance of the promises and agreements hereinbefore set forth on the part and behalf of the Lessee to be performed, as by the Lessor, its successors and assigns, or by its or their counsel learned in the law, shall be reasonably advised, devised or required.

Article Twenty-ninth.—This lease, the covenants and agreements herein contained, the term, property and franchises hereby granted and demised,
3516 shall not nor shall any part of the same be released, transferred, sublet, assigned or encumbered, except with the written assent of the Lessor thereto first had and obtained; and in the event that the Lessee should re-lease, transfer, sublet, assign or encumber said lease or any interest therein, without such consent, then this lease shall, at the option of the Lessor, cease and determine as to said Lessee, and all rights of the Lessee thereunder or in the term hereby demised, or any part thereof, shall be at an end; but nothing in this Article contained shall extend to the case of a disposition by the Lessee of any equipment or sup-

plies, as hereinbefore provided, or to the case of a continuance or renewal of the corporate existence of the Lessee.

Article Thirtieth.—Nothing in this Indenture, anything herein contained to the contrary notwithstanding, is intended by the parties or shall be construed to deprive the Lessor of the right to discharge and perform at all times any duty which the law requires it to discharge or perform, or to authorize, the Lessee to do any act in violation of the charter of the Lessor or of any law of the United States or of the State of New York applicable to the Lessor or to the Lessee. 3518 If any clause or provision herein contained should be adjudged invalid or *ultra vires* the same shall not affect the validity of any other clause or provision of this Indenture or constitute any cause of action in favor of either party to this Indenture.

In Witness Whereof, the said Lessor and Lessee have each caused this Indenture to be duly executed and its corporate seal to be hereunto affixed and attested by its Secretary the day and year first above written.

3519

Manhattan Railway Company By Geo. J. Gould, President (Seal)

Attest: D. W. McWilliams, Secretary.

Interborough Rapid Transit Company, By August Belmont, President. (Seal)

Attest: Frederick Evans, Secretary.

State of New York County of New York, ss.:

On the 8th day of January, in the year One thousand nine hundred and three, before me personally came George J. Gould, to me known, who,

3520 being by me duly sworn, did depose and say that he resided at Lakewood, in the State of New Jersey; that he is the President of Manhattan Railway Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

3521 M. L. Utter, Notary Public, Kings County. Certificate filed in New York County. (Seal)

State of New York, County of New York, ss.:

On the 8th day of January, in the year one thousand nine hundred and three, before me personally came August Belmont, to me known, who, being by me duly sworn, did depose and say that he resided in the Town of Hempstead, Nassau County, New York; that he is the President of the Interborough Rapid Transit Company, the corporation described in and which executed the above instrument; that he knew the seal of said corpora-
3522 tion; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Chas. W. Sandford, Notary Public, No. 20, Kings County. Cert. filed in N. Y. County. (Seal.)

I, Daniel W. McWilliams, the Secretary of the Manhattan Railway Company, do hereby certify that the foregoing contract of lease was approved by the votes of stockholders of the Manhattan Railway Company owning at least two-thirds of

the stock of said corporation, which was represented and voted upon in person or by proxy at a meeting called separately for that purpose upon notice stating the time, place and object of the meeting served at least thirty (30) days previously upon each stockholder personally or mailed to him at his post office address, and also published at least once a week for four weeks successively in *The Evening Post* and *The New York Tribune*, newspapers printed in the City and County of New York, where said corporation has its principal office.

In Witness Whereof, I have hereunto set the seal of said corporation this 16th day of January, one thousand nine hundred and three.

D. W. McWilliams, Secretary. (Seal.)

I, Frederick Evans, the Secretary of the Interborough Rapid Transit Company, do hereby certify that the foregoing contract of lease was approved by the votes of stockholders of the Interborough Rapid Transit Company owning at least two-thirds of the stock of said corporation, which was represented and voted upon in person or by proxy at a meeting called separately for that purpose, upon notice stating the time, place and object of the meeting, served at least thirty (30) days previously upon each stockholder, personally, or mailed to him at his post-office address, and also published at least once a week for four weeks successively in *The New York Times*, a newspaper printed in the City and County of New York, where said corporation has its principal office.

In Witness Whereof, I have hereunto set the

seal of said corporation, this 16th day of January, one thousand nine hundred and three.

(Seal) Frederick Evans, Secretary.

Guaranty Trust Company of New York Hereby Acknowledges the receipt from Interborough Rapid Transit Company under and pursuant to the provisions of a certain Contract of Lease dated January first, one thousand nine hundred and three, between Manhattan Railway Company, as Lessor, and the Interborough Rapid Transit Company, as
3527 Lessee, of the sum of four million dollars ($4,000,000) in lawful money of the United States of America, which money is held upon the trusts and subject to the terms, covenants, stipulations and agreements in said Contract of Lease contained with respect thereto.

In Witness Whereof, the said Guaranty Trust Company of New York has caused its corporate name to be hereunto subscribed by its President, and its corporate seal to be hereunto affixed and attested by its Secretary, this 16th day of January, one thousand nine hundred and three.

3528

Guaranty Trust Company of New York,
(Seal) By W. G. Oakman, President.

Attest: E. C. Hebbard, Secretary.

State of New York, County of New York, ss.:

On the 31st day of March, one thousand nine hundred and three, before me personally came Walter G. Oakman, to me known, who, being by me duly sworn, did depose and say that he resided in the Borough of Manhattan, City, County and State of New York; that he is the President of the Guaranty Trust Company of New York, the

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corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

F. J. Sutton, Notary Public, New York County.

Note.

Following this sheet are the consent of the State Board of Railroad Commissioners and certifications by the Secretary of State and the County Clerk. 3530

These are on file in the Transit Commission, attached to a copy of another edition than the preceding, of the Manhattan-Interborough Lease.

That is, there are two editions on file in the Transit Commission, and the one of these which does not contain the certifications is reproduced line for line in the foregoing pages. Both editions are identical in text.

Before the Board of Railroad Commissioners of the State of New York, at the Capitol, Albany, January 13, 1903. 3531

Present: Com. Ashley W. Cole, Com. Frank M. Baker, Com. George M. Dunn.

In the Matter of the application of the Manhattan Railway Company for consent to the Lease of its railway to the Interborough Rapid Transit Company.

This application by the Manhattan Railway Company, for consent of this Board, under section 80 of the Railroad Law, to the lease of its railway

3532 to the Interborough Rapid Transit Company, was filed with this Board on January 12, 1903, together, with a copy of the lease, dated, January 1, 1903. A hearing in the matter was given by the Board at its office in Albany on January 13, 1903, at which Julien T. Davies, counsel, and Alfred Skitt, vice-president of the Manhattan Railway Company, appeared for the applicant, and John F. Charlton appeared for the Interborough Rapid Transit Company, in favor of the application. This Board is familiar with the Railroads in question and be-
3533 lieves it is justified in consenting to this lease. It is, therefore,

Ordered that this Board consents and it does hereby consent under section 80 of the Railroad Law, to the lease of the Manhattan Railway to the Interborough Rapid Transit Company, the lease being dated January 1, 1903.

By the Board, Geo. W. Aldridge, Secretary.
(Seal)

The Board of Railroad Commissioners, of the State of New York hereby consent to the forego-
3534 ing lease between the Manhattan Railway Company and the Interborough Rapid Transit Company, dated January first, 1903.

Dated January 13th, 1903

Ashley W. Cole, Chairman. Frank M. Baker, Geo. M. Dunn.
(Seal)

Attest: Geo. W. Aldridge, Secretary.

3535

State of New York, Office of the Secretary of State, ss:

I have compared the preceding with the original Lease of the Manhattan Railway Company to the Interborough Rapid Transit Company, filed and recorded in this office on the 4th day of April, 1903 and do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this seventh day of April, one thousand nine hundred and three.

3536

John F. O'Brien, Secretary of State.
(Seal).

Register's Office, County of New York, State of New York.

I, John H. J. Ronner Register of the said County, have compared the annexed copy with an instrument Recorded in this office, on the 1st day of April, A. D., 1903, at 12 o'clock 55 mins. P. M., in Liber 35 and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

3537

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal, this 7th day of April, 1903.

John H. J. Ronner Register
(Seal) S. J. L. J. W.

State of New York, County of New York, ss:

I, Thos. L. Hamilton, Clerk of the said County and Clerk of the Supreme Court of the said State for said County, do certify that I have compared

3538 the preceding with the original lease and Consent, Manhattan Railway Company to Interborough Rapid Transit Company. Filed and Recorded April, 1st, 1903, 12h. 41 m. on file and recorded in my office and that the same are correct transcripts therefrom and the whole of said originals.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal, this 4th day of April, 1903.

Thos. L. Hamilton, Clerk.

3539 (Seal)

State of New York, City of New York, County of New York, ss:

Albert T. Swords being duly sworn, deposes and says:

I am 21 years of age and upwards and an attorney and counselor at law of the State of New York.

I have compared the annexed document entitled "Manhattan Railway Company to Interborough Rapid Transit Company—Lease—Dated January 3540 1, 1903" with a printed copy of the original on file in the office of the Transit Commission as I am advised by the Secretary of the Transit Commission of the State of New York.

I have also compared the certificates of approval of said lease made by the State Board of Railroad Commissioners dated January 13, 1903, the certificate of the Secretary of State stating that a copy of the original of said lease was filed in his office on April 4, 1903; also the certificate of the register of the County of New York stating said lease was recorded in his office on the first day of April, 1903; also the certificate of the clerk of the County

3541

of New York stating that the said lease and the consent of the railroad commissioners thereto was filed and recorded in his office on April 1, 1903.

I hereby certify that I have compared the foregoing documents with the originals or certified copies thereof on file in the office of the Transit Commission, above specified, and that the same are true and correct copies thereof.

Albert T. Swords.

Sworn to before me this 28th day of June, 1923. Diana Steigman, Notary Public, Queens Co. No. 1851, Certificate filed New York Co. No. 605, New York Register's No. 5555, Term expires March 30, 1925 (Notary Seal).

3542

City's Exhibit 45-A—Agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., Dated Mar. 15, 1913.

Agreement between the Manhattan Railway Company and the Interborough Rapid Transit Company, entered into this 15th day of March, 1913:

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Whereas, the agreement of lease made January 1, 1903, between the parties hereto, provided in the 5th Article, as follows:

"The lessor further covenants and agrees that whenever required by the lessee during the continuance of this lease it will do and perform every corporate act which may be necessary, useful or appropriate to secure to the lessee or its successors the full enjoyment of the railroads, property and franchises hereby demised or intended to be, and any and all extensions, branches and other railroads hereafter constructed or acquired, and

3544 which shall become a part of the demised premises; that it will use every effort to retain and preserve its corporate existence and organization during the continuance of this lease, and will take any and all proceedings authorized by law for the extension of its charter or charters, and for the purpose of acquiring by the exercise of the right of eminent domain, any real property or interest therein which the lessor shall be requested to acquire by the lessee, and that it will endeavor to obtain the right to construct such extensions of the
3545 route of its railroads, such additional tracks and railroad facilities, and such branch or branches therefrom, as shall be approved by the lessor and lessee, or required by law, and to that end will take such proceedings as may be authorized by law. The expense of doing all acts to be done by the lessor under this Article Fifth, shall be borne and paid by the lessee except as provided in Article Second of these presents."

And by the 14th Article as follows:

"The lessee further covenants and agrees that at the expiration of this lease or upon any sooner
3546 termination thereof, all property, extensions, branches, additions, improvements and equipments constructed, made or furnished by the lessee out of its own funds, to the said railroad or railroads otherwise than in compliance with the provisions of this Indenture, shall remain for use upon or as part of said demised property, and shall be and become the property of the lessor upon the payment by the lessor of the reasonable value thereof,"

and

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Whereas, application has been made under the Rapid Transit Act to the Public Service Commission for the First District of the State of New York for a certificate authorizing the Manhattan Company to complete its express service by additional track or tracks upon its Second Avenue Line between Division Street and Harlem River, upon its Third Avenue Line between the junction of Pearl Street and New Bowery and the intersection of Pelham and Third Avenue, and on Park Row between Brooklyn Bridge and Chatham Square, and upon its Ninth Avenue Line between a point at or near Battery Place and 159th Street and Eighth Avenue; and

3548

Whereas, a certificate for the construction, maintenance and operation of such additional track or tracks and additional railroad facilities has been granted by the Public Service Commission in form hereto attached and made a part of this agreement;

Now, Therefore, This Agreement Witnesseth: That for valuable considerations it is agreed between the parties hereto:

3549

First: The entire future cost of constructing the plant and property as defined in the annexed certificate, together with all expenses of obtaining the said certificate, except as in Article Second hereof provided, shall be defrayed by the Interborough Company, and upon such payment the said plant and property and all rights of the Manhattan Company under said certificate shall be deemed additions or improvements to the demised property made or furnished by the lessee out of its own funds within the meaning of said lease, not including, however, such additional tracks and

3550 structures, if any, heretofore laid or constructed and not paid for by the lessee, as may be finally determined to have been laid or constructed without authority of law.

Second: The Manhattan Company agrees to issue $5,409,000, face amount, of the Second Mortgage Four Per Cent. Bonds referred to in Article Fourth of the lease as therein provided, to have a maturity of not to exceed one hundred (100) years and to be secured by mortgage as in said article provided, and agrees to make such application
3551 as may be necessary to the Public Service Commission for the First District of the State of New York for authority to issue such bonds; and inasmuch as it is claimed by the Interborough Company that it has heretofore expended, for purposes specified in Article Second of the lease (same to be construed in connection with all the other provisions of the lease) as purposes for which funds of the Manhattan Company as therein referred to can be expended, sums of money which in the aggregate exceed by approximately Three million nine hundred forty-nine thousand dollars ($3,949,000) the
3552 amount of funds of the Manhattan Company paid or applied for expenditures for such purposes, it is hereby agreed that the amount which has been so expended by the Interborough Company for such purposes and the amount paid or applied by the Manhattan Company thereon shall be at once investigated by the Manhattan Company, and the Manhattan Company will agree with the Interborough Company within a period of sixty days from the date of this instrument in regard thereto, or if an agreement cannot be reached the matters aforesaid shall be determined by arbitration

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in the manner provided in Article Twenty-sixth of the lease. The Interborough Company shall be entitled to receive and shall receive out of the proceeds of such bonds the excess, if any, of the amount of such expenditures over the amount so paid or applied.

The Manhattan Company hereby agrees that all expenditures by the Interborough Company for equipment for use upon the Manhattan Company's railroads are proper reimbursable expenditures under the provisions of Article Second of the lease and the parties hereto agree that the title to 3554
all such equipment so purchased shall vest in the Manhattan Company subject to the reimbursement of the Interborough Company by the Manhattan Company of the cost thereof and the Interborough Company hereby covenants that the same shall be free and clear of all liens created by the Interborough Company. Any balance of the proceeds of such bonds shall be received by the Interborough Company and may be used by it for the payment of the cost of additions, improvements, extensions, branches and equipments of the said railroads and properties of the lessor as provided by the Article 3555
Second of said lease, as construed in connection with all the other provisions of the lease. The interest and any amortization payments required to be made upon said bonds by reason of the sale thereof at a discount, shall be paid by the Interborough Company as a part of the rental under the lease.

Third: In pursuance of the provisions of said lease and without in any way limiting the obligation of the parties thereunder, it is hereby specifically agreed that during the continuance of

the lease the Interborough Company shall make all payments, including, among other things, rentals, and perform all acts, covenants, matters and things required of the Manhattan Company by the terms of said certificate, or which may become necessary in carrying out its provisions, or any of them, and shall hold the Manhattan Company harmless in respect to any and all claims, damages, compensation to abutters, or liabilities of whatsoever nature arising during the continuance of the lease out of acts done or required
3557 to be done by the Manhattan Company under the authority of said certificate or based upon the provisions thereof.

Fourth: In the event that the City, under the terms of the certificate, shall, prior to the termination of the said authorizations or licenses, exercise the right conferred thereunder to take over the plant and property, and the Manhattan Company shall not in the meantime in any manner have acquired the rights of the Interborough Company, the payment made by the City as a condition of the termination of the said authorizations or
3558 licenses shall be made to the Manhattan Railway Company and to its lessee or lessees respectively, in proportion and to the extent to which the said parties shall have paid the cost of the said plant and property.

Fifth: Inasmuch as it is claimed by the Manhattan Company that the sum of Ten thousand dollars ($10,000) payable to that company semi-annually on the first days of October and April of each year under the terms of said lease, will be insufficient to meet the additional expenses of that company on account of its acceptance of said cer-

3559

tificate for additional tracks not payable by the lessee under the terms of the lease, and that on such account an additional payment should be made by the lessee to the lessor, it is further agreed that the lessee will pay to the lessor, in addition to all sums payable by the lessee under the terms of the lease as follows: The sum of Twenty-five thousand dollars ($25,000) per annum, payable semi-annually on the first days of April and October, for a period of twenty (20) years, commencing March 14, 1913, and will continue such additional payment thereafter at the same annual rate, 3560 unless within six months prior to the expiration of said period of twenty (20) years either party should by notice in writing to the other request that the amount of such additional payment be increased or reduced; and in case of any such request, and the parties are unable to agree upon the amount of such annual payment to be thereafter made, the question of such future payment shall be submitted to and determined by arbitration, upon the request of either party, in the same manner as is provided for the arbitration of matters under the terms of said lease in Article Twenty-sixth thereof. 3561 A like readjustment of the amount of such annual payment shall be made for each additional period of twenty (20) years during the continuance of the said certificate for additional tracks, if requested by either party in the manner above provided.

Sixth: In case of a termination of the lease from any cause, and if the Manhattan Company should be under obligation, or shall elect, under the terms of Article Fourteenth of the lease, to pay to the Interborough Company the reasonable value

of any "property, extensions, branches, additions, improvements and equipments constructed, made or furnished by the lessee out of its own funds to the said railroad or railroads, otherwise than in compliance with the terms of the lease," such payment, with interest thereon at the rate of five per cent. (5%) per annum from the time of taking possession by the Manhattan Company, shall be made by the Manhattan Company within eighteen (18) months after the date upon which it shall give notice of its election to terminate the lease under
3563 the provisions of Article Twenty-first thereof and the terms of this contract, or after the date of the termination of the lease for cause other than the default of the lessee; provided, however, that if the amount to be paid for such property, extensions, branches, additions, improvements and equipments, shall not be agreed upon between the Manhattan Company and the Interborough Company within twelve (12) months after the termination of the lease, the same, upon the request of either party made within said period of twelve months, shall be determined by arbitration in the
3564 manner provided for by Article Twenty-sixth of the lease.

Seventh: Any notice of election to terminate the lease which the Manhattan Company may be entitled to give under the provisions of Article Twenty-first of the lease, may, at the option of the Manhattan Company, specify a date within the period of nine months from the date of giving such notice, as the date upon which such lease will terminate, and such lease shall continue in full force and effect to and until the date so specified.

The Manhattan Company, after giving the no-

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tice of election to terminate the lease, may, at any time, by resolution of its board of directors, and with the consent of the Interborough Company, shown by resolution of its board of directors, annul and withdraw such notice of election to terminate the lease, provided the resolutions of the boards of directors aforesaid be adopted prior to the date fixed for the termination of such lease in the notice of election to terminate the lease.

Nothing contained in this agreement shall be construed or held to in any way affect or modify the aforesaid lease between the Manhattan Company and Interborough Company made January 1, 1903, which, and all the provisions thereof, remain in full force and unaffected hereby.

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In Witness Whereof, the Manhattan Railway Company has caused this instrument to be executed in its corporate name by E. T. Jeffery, one of its directors, who in the absence of the President and Vice-President of said corporation, has been duly designated, appointed, authorized and directed to execute the same, and has caused its corporate seal to be hereunto affixed, attested by its Secretary, and the Interborough Rapid Transit Company has caused this instrument to be signed by its President and its corporate seal to be hereunto affixed, attested by its Secretary, the day and year first above written.

3567

Executed in duplicate.

Manhattan Railway Company, By E. T. Jeffery, Director. (Seal)

Attest: D. W. McWilliams, Secretary.

Interborough Rapid Transit Company, By T. P. Shonts, President. (Seal)

Attest: H. M. Fisher, Secretary.

3568

State of New York, City of New York, County of New York, ss.:

Albert T. Swords, being duly sworn, deposes and says:

I am 21 years of age and upwards and an attorney and counselor at law of the State of New York.

I have compared the annexed document entitled "Manhattan Railway Company with Interborough Rapid Transit Company—Agreement—Dated March 15th, 1913—Supplemental Agreement to
3569 Lease—Dated January 1, 1903" with a printed copy of the original on file in the office of the Transit Commission and deposited there by the said companies or one of them, as I am advised by the Secretary of said Transit Commission.

I hereby certify that the typewritten copy hereto annexed is a true and correct copy of said printed copy of said original document on file with the Transit Commission as above stated.

Albert T. Swords.

3570 Sworn to before me this 28th day of June, 1923. Diana Steigman, Notary Public, Queens Co., No. 1851. Certificate filed New York Co. No. 605. New York Register's No. 5555. Term expires March 30, 1925. (Notary Seal.)

City's Exhibit 45-B—Agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., Dated Oct. 22, 1913.

Agreement made this 22nd day of October, 1913, by and between Manhattan Railway Company (hereinafter called Manhattan Company), party

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of the first part, and Interborough Rapid Transit Company (hereinafter called Interborough Company), party of the second part:

Whereas, by indenture of lease dated January 1, 1903, Manhattan Company duly demised to Interborough Company all the railroads and property of Manhattan Company for the full term of 999 years from the date of organization of Manhattan Company, for the rent and upon the terms, covenants and agreements in said indenture of lease contained; and

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Whereas, Interborough Company has claimed to be entitled to be paid by Manhattan Company, because of expenditures made by Interborough Company a sum in excess of $3,708,069 and Manhattan Company proposes presently to issue, pursuant to request made by Interborough Company and as provided in said lease, a new series of bonds bearing four per centum interest per annum, payable semi-annually, to the amount of principal of $5,409,000 and has agreed to pay to Interborough Company, with a portion of said bonds or their proceeds $3,708,069 on the understanding that said payment shall be in full satisfaction and discharge of any and all moneys owing to Interborough Company by Manhattan Company up to and including June 30, 1913, and that no claim will at any time now or hereafter be made by Interborough Company for any additional moneys from Manhattan Company because or in respect of any moneys expended by Interborough Company prior to said date; and also upon the understanding that said payment shall not constitute and shall not be construed to be in pursuance of, or to operate in any manner as, a construction of said lease,

3573

3574 and shall be made without prejudice to any construction of said lease that may hereafter be advanced by Interborough Company or by Manhattan Company; and

Whereas, it is expected by the parties hereto that moneys in excess of said sum of $3,708,069 will be realized from the sale of said $5,409,000 face amount of bonds, and it is the desire of the parties hereto to provide as hereinafter set forth for the application of the proceeds of said bonds to the extent that they exceed said $3,708,069 and
3575 of such other moneys as under the terms of said lease may from time to time properly be expended for purposes described in Article Second of said lease;

Now, therefore, in consideration of the premises and of One Dollar and of other valuable considerations from each party to the other passing, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

Section 1. The proceeds in excess of $3,708,069 derived by Manhattan Company from the sale or
3576 other disposition of the $5,409,000 face amount, of four per cent. bonds, which are presently to be issued by Manhattan Company according to the provisions of said lease dated January 1, 1903, and also any and all other moneys which under the terms of said lease may be expended for purposes set forth in Article Second of said lease (as construed in connection with all other provisions thereof) shall be paid over to and remain in the possession of the Interborough Rapid Transit Company and be applied and expended only for some one or more of the following purposes:

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(a) To the construction af additional stations upon the railroads of The Manhattan Railway Company at 38th Street and Sixth Avenue at 99th Street and Columbus Avenue;

(b) To the extinguishment of claims of owners of property abutting upon the railroads and railroad routes of The Manhattan Railway Company, and such other matters in connection therewith as by Article Eighteenth of said lease are described as payable from the fund provided for in Article Second of said lease; and

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(c) For such of the purposes set forth in said lease as may from time to time be agreed upon by Manhattan Company and Interborough Company acting through or by their respective Boards of Directors or Executive Committees or by such officers or other persons as may be respectively designated by said Boards or Executive Committees.

Neither of the parties hereto will apply or expend, or cause, suffer or permit to be applied or expended any of the moneys aforesaid, except for some one or more of said purposes and except in the manner hereinafter provided.

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Section 2. Within thirty days after any application or expenditure of any of such moneys for any purposes mentioned in paragraph (a) or paragraph (b) of Section 1 hereof, Interborough Company will notify Manhattan Company in writing of the amount and purpose thereof.

Section 3. Prior to any application or expenditure of any of said moneys for any purpose other than a purpose mentioned in paragraph (a) or paragraph (b) of Section 1 hereof, the Interbor-

3580 ough Company will notify the Manhattan Company in writing of any application or expenditure at any time proposed or contemplated, and the amount and purpose thereof.

Within thirty days after receipt of any notice, as provided for by the next preceding paragraph, the Manhattan Company will notify the Interborough Company in writing of its approval or disapproval of the amount or purpose thereof, or both.

3581 Section 4. If the Interborough Company shall not have been notified by the Manhattan Company within the thirty days' period aforesaid, as provided by Section 3 hereof, of the approval or disapproval of Manhattan Company, such failure of the Manhattan Company to notify the Interborough Company shall be and shall constitute an approval by the Manhattan Company of the application or expenditure proposed or contemplated and the amount and purpose thereof.

Section 5. Upon any approval by the Manhattan Company, whether express or implied as above
3582 provided, as the case may be, as to amount and purpose, the Interborough Company may apply or expend or cause to be applied or expended moneys out of any of the moneys aforesaid to the amount and for the purpose or purposes so approved.

Section 6. The true intent and purpose of this agreement is to insure the expenditure of the moneys in this agreement described for certain purposes which in the opinion of the parties hereto are included in those mentioned in Article Second of said lease between Interborough Com-

pany and Manhattan Company, dated January 1, 1903, and nothing contained in this agreement shall be construed or held to be in any way a construction of the rights of the parties to said lease dated January 1, 1903, nor shall this agreement be construed or held to construe said lease, or any article thereof, or to affect, upon any termination of said lease, the rights of the parties thereto with respect to expenditures that may hereafter be made by the Interborough Company upon the properties of Manhattan Company and in respect of which the Interborough Company may at any termination of said lease claim to be entitled to be reimbursed.

In Witness Whereof, the parties hereto have caused these presents to be executed by their proper officers the day and year first above written.

Executed in duplicate.

Manhattan Railway Company, By Edward T. Jeffery, Vice-President. (Seal)

Attest: D. W. McWilliams, Secretary.

Form approved, R. R. R., G. C.

Interborough Rapid Transit Company, by T. P. Shonts, President. (Seal)

Attest: H. M. Fisher, Secretary.

State of New York, County of New York, ss.:

On the twenty-second day of October in the year one thousand nine hundred and thirteen (1913), before me personally came Edward T. Jeffery, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York, that he is the Vice-President of the Manhattan Railway Company, the corporation de-

3586 scribed in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of Directors of said corporation, and that he signed his name thereto by like order.

S. D. Fricke, Notary Public N. Y. Co. 119. Commission expires Mar. 30, 1914 (Seal)

State of New York, County of New York, ss.:

3587 On this 23rd day of October, in the year one thousand nine hundred and thirteen (1913), before me personally came T. P. Shonts, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he is the President of the Interborough Rapid Transit Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

3588 J. C. Norris, Notary Public, New York County No. 2777. Certificate filed Register's Office, New York County No. 5029. (Seal)

City's Exhibit 45-C—Agreement, Manhattan Railway Co. with Interborough Rapid Transit Co., Dated Feb. 17, 1916.

Agreement, made this 17th day of February, nineteen hundred and sixteen, by and between Manhattan Railway Company (hereinafter called

the Manhattan Company), party of the first part, and Interborough Rapid Transit Company (hereinafter called the Interborough Company), party of the second part: 3589

Whereas, by indenture of lease, dated January 1, 1903, the Manhattan Company duly demised to the Interborough Company all the railroads and property of the Manhattan Company for the full term of nine hundred and ninety-nine years from the date of organization of the Manhattan Company, for the rent and upon the terms, covenants, and agreements in said indenture of lease contained; and, 3590

Whereas, in and by said lease, the Manhattan Company covenanted and agreed that it would, on or after the 1st day of July, 1908, at the request of the Interborough Company, issue at the highest price obtainable therefor, a new series of bonds bearing four per cent. interest per annum and payable semi-annually, to the amount of principal of $5,409,000, secured by a mortgage covering, if deemed advisable by the Interborough Company, either a portion or the whole of the franchises, rights, privileges and property of the Manhattan Company; and, 3591

Whereas, pursuant to request of the Interborough Company and to the terms of said lease as aforesaid, the Manhattan Company proposes to issue its bonds to said principal amount and to secure the same by its proposed Second Mortgage to The Equitable Trust Company of New York, as Trustee, dated June 1, 1913; and,

Whereas, it was the intention of the parties to said lease that the lien of such proposed Second

3592 Mortgage upon or in respect of any and all of the franchises, rights, privileges and property of the Manhattan Company described in or intended to be covered by said mortgage, should be superior to any and all rights, liens, titles, or interests in, upon, to or in respect of the same leased, demised, granted, assigned or otherwise conveyed or confirmed to the Interborough Company under or by the said lease, or under or by any agreement made between the parties hereto after January 1, 1903; and,

Whereas, under the terms of said lease and of
3593 contracts between the parties hereto, dated March 15, 1913, and October 22, 1913, the proceeds of the sale of bonds to be issued under said Second Mortgage are to be paid to the Interborough Company, part thereof in complete settlement of amounts due by the Manhattan Company to the Interborough Company on June 30, 1913, and the remainder thereof to be expended by the Interborough Company for the purposes of improvement of the Manhattan Company's railways and so forth, set forth in Article Second of said lease, and any amortization payments required to be made upon the said
3594 bonds by reason of the sale thereof at a discount are to be paid by the Interborough Company as part of the rental under the said lease; and,

Whereas, no bonds have yet been issued or sold under the said proposed Second Mortgage and the Interborough Company is interested in promoting the advantageous sale of bonds thereunder; and,

Whereas, the Interborough Company heretofore executed its First and Refunding Mortgage to Guaranty Trust Company of New York, as Trustee, dated March 20, 1913, and it is in the said mortgage provided that the said lease from the Man-

hattán Company to the Interborough Company, dated January 1, 1903, may be modified so as to permit the creation of further liens upon the property leased thereby for the purpose of refunding or paying any bonds or other obligations of, or assumed by, or constituting a lien upon the property of, the Manhattan Company, or for improvements upon, additions to, or extensions of its properties; 3595

Now, therefore, for the purpose of declaring and providing for the superiority of the said Second Mortgage, and in consideration of the matters above recited and of One Dollar and of other valuable considerations from each party hereto to the other passing, receipt whereof is hereby acknowledged, and as an inducement to purchasers of the said Second Mortgage Bonds, the parties hereto agree as follows: 3596

1. Said lease of January 1, 1903, is made more definite and certain by providing, in express terms, that the said proposed Second Mortgage of the Manhattan Company to The Equitable Trust Company of New York, as Trustee, to be dated June 1, 1913, shall have the priority in lien and right in this agreement set forth. 3597

2. That the lien of the said proposed Second Mortgage of the Manhattan Company upon or in respect of any and all of the franchises, rights, privileges, and property of the Manhattan Company described in or intended to be covered by said mortgage, is and shall be superior to any and all rights, liens, titles or interests in, upon, to or in respect of the same, leased, demised, granted, assigned or otherwise conveyed or confirmed to the Interborough Company under or by the indenture of lease of Manhattan Company to Interborough

Company, dated January 1, 1903, or under or by any agreement made between the parties hereto after January 1, 1903, though any such agreements are not herein more particularly described; subject, however, to the rights reserved to or vesting in the City of New York under or pursuant to the provisions of the certificate of the Public Service Commission for the First District of the State of New York, dated March 19, 1913, to Manhattan Company, and to any and all rights reserved to and vesting in the Interborough Company under the
3599 provisions of said certificate and as provided in an agreement between the Interborough Company and the Manhattan Company, dated March 15, 1913, in, to or in respect of any and all railroads, third tracks, equipment, additions or other property constructed, purchased or acquired under or pursuant to the provisions of said certificate, or in, to or in respect of any moneys received from the City of New York under or pursuant to the provisions of said certificate; but with the right in the Trustee under said Second Mortgage, at its election, to be subrogated to all the rights of the Manhattan Com-
3600 pany under the provisions of said certificate, said lease and said agreement of March 15, 1913.

3. The Interborough Company agrees that it will, from time to time, whenever requested by the Manhattan Company, make, execute and deliver to the Manhattan Company or to such corporation or corporations, person or persons, as shall be designated by the Manhattan Company, further and additional agreements evidencing such superiority of lien of such proposed Second Mortgage.

4. Nothing in this agreement or in the said Second Mortgage contained shall be deemed to

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modify any provisions of said lease or to place any limitations upon the rights of the lessor or of the lessee thereunder, except as herein expressly stated, and it is understood and agreed that the covenants of the lessee to pay the rentals and the obligations of the lessor and lessee to carry out all their respective covenants, agreements or obligations in said lease contained, shall be in no wise affected hereby.

5. This agreement has been executed in counterparts, each of which shall be, and shall be taken to be, an original, and all collectively, but one instrument.

3602

In Witness Whereof, Manhattan Railway Company, party hereto of the first part, has caused this agreement to be signed and acknowledged or proved by its President or Vice-President and its corporate seal to be hereunto affixed and attested by the signature of its Secretary, and Interborough Rapid Transit Company, party of the second part, has caused this agreement to be signed and acknowledged or proved by its President or Vice-President and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary, as of the day and year first above written.

3603

In token that this instrument is executed and delivered simultaneously with the execution and delivery of the said Second Mortgage, The Equitable Trust Company of New York, as Trustee

under said mortgage, hereby joins in the execution of this instrument.

Manhattan Railway Company, By Edgar L. Marston, President. (Seal)

Attest: D. W. McWilliams, Secretary.

Interborough Rapid Transit Company, By T. P. Shonts, President. (Seal)

Attest: H. M. Fisher, Secretary.

The Equitable Trust Company of New York as Trustee, By Lyman Rhoades, Vice-President. (Seal)

3605 Attest: S. Armstrong, Asst. Secretary.

State of New York, County of New York, ss.:

On the 17th day of February, in the year Nineteen hundred and sixteen, before me personally came Edgar L. Marston, to me known, who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the President of Manhattan Railway Company, one of the corporations described in and which executed the above and foregoing instrument; that he knows the seal of said cor-

3606 poration; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Arthur P. Vermilya, Notary Public, New York County No. 3964. New York Register No. 6007.

State of New York, County of New York, ss.:

On the 18th day of February, in the year Nineteen hundred and sixteen, before me personally came Theodore P. Shonts, to me known, who,

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being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that he is the President of Interborough Rapid Transit Company, one of the corporations described in and which executed the above and foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

3608

Frank Rhodes, Notary Public, New York County No. 3230. Certificate filed Register's Office. New York County No. 6005.

State of New York, County of New York, ss.:

On this 19th day of February, in the year one thousand nine hundred and sixteen (1916), before me personally came Lyman Rhoades, to me known, who, being by me duly sworn, did depose and say that he resides in Sharon, Connecticut; that he is a Vice-President of The Equitable Trust Company of New York, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation, and that he signed his name thereto by like order.

3609

Myles M. Bourke, Notary Public, New York County No. 222. Register's Office No. 6148. Term expires March 30, 1916.

3610 **City's Exhibits 46-A to 46-P—Photographs.**

(These photographs are printed at page 1892 of the record.)

City's Exhibit 47—Order and Determination of Transit Commission (Case No. 2704).

At a meeting of the Transit Commission held at its offices No. 49 Lafayette Street, Borough of Manhattan, City of New York, on the 6th day of December, 1923.

3611 Present: George McAneny, Chairman, Leroy T. Harkness, Commissioners.

In the Matter of the Application of the Manhattan Railway Company for a determination, pursuant to Chapter 635 of the Laws of 1923, of railway facilities and structures necessary for the public convenience in the vicinity of its elevated railway station at Third Avenue and 42nd Street.

3612 (Order and Determination, Case No. 2704.)

The Public Service Commission for the First District having, by certificate dated April 22, 1921, in Case No. 2562, certified, pursuant to Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, that the tracks, structures, station and appurtenances of the Manhattan Railway Company in East 42nd Street, in the Borough of Manhattan, City of New York, are no longer necessary and convenient for the public service and constitute an impediment and obstruction to the public use of said street: and Chapter 635 of the Laws of 1923 having prescribed the area within which the said tracks, structure, station and ap-

purtenances should be condemned by The City of New York pursuant to said certificate of the Public Service Commission, and having further provided that nothing in said act contained should be deemed to extinguish or impair any existing franchise right of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities, including stairways in connection with and immediately adjacent to its Third Avenue Station at 42nd Street as the Transit Commission should determine to be necessary for the public convenience and necessity; and the said Manhattan Railway Company having, by petition dated November 9, 1923, made application to the Commission for a determination that public convenience and necessity requires:

(a) the construction, reconstruction, maintenance and operation of certain structures and facilities designated on I. R. T. Drawing No. 22941.

(b) that the portion of the elevated railroad structures, tracks, stations, platforms, stairways and appurtenances now existing within the condemnation area and obstructing said street are only such as are not indicated on said drawing No. 22941.

(c) that the said certificate dated April 22, 1921 is without prejudice to any franchise of said company to construct, maintain or operate or restore said facilities.

(d) that said removal shall be accomplished and affected by Manhattan Railway Company, the necessary and reasonable cost thereof to be paid by the City.;

3616 and the Commission having, by order herein dated November 20, 1923, directed that a hearing on said application be held on November 28, 1923, said order designating and certifying George L. Lucas, Acting Chief Executive Officer, to conduct said hearing, take the testimony and report same to the Commission, together with his opinion thereon for its decision and determination; and the said hearing having been duly held on November 28, December 3 and 4, 1923 and Counsel to the petitioner at said hearing having orally amended its petition
3617 to make application for a certificate of convenience and necessity under Section 53 of the Public Service Commission Law for the right to exercise the company's franchise and to erect, maintain and operate such structures shown on its plan, Drawing No. 22941 as are outside of the area of condemnation referred to in Chapter 635 of the Laws of 1923; and the said Acting Chief Executive Officer having made his report and opinion dated December 6, 1923, wherein he finds and recommends

(1) That the Commission issue a certificate of
3618 convenience and necessity pursuant to Chapter 635 of the Laws of 1923; that the petitioner maintain, construct or reconstruct and operate

(a) two columns supporting the 42nd Street Station of the Third Avenue Elevated Line, which columns are now within the roadway of 42nd Street west of Third Avenue and a plate girder in place of the present lattice type construction extending from the northerly curb to the southerly curb of 42nd Street.

(b) a stairway at the southwesterly corner of

42nd Street and Third Avenue leading from the street to said elevated railroad structure. 3619

(c) a stairway at the northwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(d) the waiting room, house for trackmen, porter's closet, women's toilet, circuit breaker house and cable splicing platform now upon the structure of the said elevated railroad.

(e) a duct line under and along 42nd Street from Shaft No. 1 of the Queensboro Subway Rapid Transit Railroad to a pipe connection on a column supporting the elevated railroad at 42nd Street and Third Avenue sufficient to accommodate all cables now carried on the spur. 3620

All substantially as shown on said Drawing No. 22941.

(2) That the Commission issue a certificate of convenience and necessity pursuant to Section 53 of the Public Service Commission Law; that the petitioner construct, maintain and operate a stairway at the northeast corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure, substantially as shown on said Drawing No. 22941. 3621

(3) That the Commission reserve for consideration, under its contractual power, the number of ducts to be installed under and along 42nd Street for the additional power supply made necessary by the extension of the Queensboro Subway Rapid Transit Railroad; and said report and opinion having been approved on December 6, 1923.

3622 *City's Exhibits.*

Now, Therefore, the Transit Commission does hereby order and determine.

(1) That the Commission issue a certificate of convenience and necessity pursuant to Chapter 635 of the Laws of 1923; that the petitioner maintain, construct or reconstruct and operate

(a) two columns supporting the 42nd Street Station of the Third Avenue Elevated Line, which columns are now within the roadway of 42nd Street west of Third Avenue and a plate girder in place
3623 of the present lattice type construction extending from the northerly curb to the southerly curb of 42nd Street.

(b) a stairway at the southwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(c) a stairway at the northwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(d) the waiting room, house for trackmen, porter's closet, women's toilet, circuit breaker
3624 house and cable splicing platform now upon the structure of the said elevated railroad.

(e) a duct line under and along 42nd Street from Shaft No. 1 of the Queensboro Subway Rapid Transit Railroad to a pipe connection on a column supporting the elevated railroad at 42nd Street and Third Avenue sufficient to accommodate all cables now carried on the spur.

All substantially as shown on said Drawing No. 22941.

(2) That the Commission issue a certificate of convenience and necessity pursuant to Section 53

3625

of the Public Service Commission Law; that the petitioner construct, maintain and operate a stairway at the northeast corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure, substantially as shown on said Drawing No. 22941.

(3) That the Commission reserve for consideration, under its contractual power, the number of ducts to be installed under and along 42nd Street for the additional power supply made necessary by the extension of the Queensboro Subway Rapid Transit Railroad.

3626

By the Commission: Frank N. Robinson, Acting Secretary.

State of New York, County of New York, ss:

I, Frank N. Robinson, Acting Secretary of Transit Commission, do hereby certify that I have compared the attached with the original adopted by the Transit Commission on December 6, 1923, and on file in the office of said Commission, and that it is a correct transcript thereof and of the whole of the original.

3627

In testimony whereof, I have hereunto subscribed my hand and affixed the seal of the Transit Commision, this 7th day of December, 1923.

Frank N. Robinson, Acting Secretary.
(Seal)

3628

City's Exhibit 48—Certificate of Transit Commission Pursuant to Sec. 53 of Public Service Commission Law (Case No. 2704).

State of New York, Transit Commission.

In the Matter of the Application of the Manhattan Railway Company for a determination, pursuant to Chapter 635 of the Laws of 1923, of railway facilities and structures necessary for the public
3629 convenience in the vicinity of its elevated railway station at Third Avenue and 42nd Street.

Case 2704. Certificate pursuant to Section 53 of the Public Service Commission Law.

The Public Service Commission for the First District having by certificate dated April 22, 1921, in Case No. 2582, certified pursuant to Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, that the tracks, structures, station and appurtenances of the Manhattan Railway Company in East 42nd Street, in the Borough of
3630 Manhattan, City of New York, are no longer necessary and convenient for the public service and constitute an impediment and obstruction to the public use of said street; and Chapter 635 of the Laws of 1923 having prescribed the area within which the said tracks, structure, station and appurtenances should be condemned by The City of New York pursuant to said certificate of the Public Service Commission, and having further provided that nothing in said act contained should be deemed to extinguish or impair any existing franchise right of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities, including stairways in connection with and immediately adjacent to its Third

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Avenue Station at 42nd Street as the Transit Commission should determine to be necessary for the public convenience and necessity; and the said Manhattan Railway Company, by petition dated November 9, 1923, made application to the Commission for a determination that public convenience and necessity requires:

(a) the construction, reconstruction, maintenance and operation of certain structures and facilities designated on I. R. T. Drawing No. 22941.

3632

(b) that the portion of the elevated railroad structures, tracks, stations, platforms, stairways and appurtenances now existing within the condemnation area and obstructing said street are only such as are not indicated on said drawing No. 22941.

(c) that the said certificate dated April 22, 1921, is without prejudice to any franchise of said company to construct, maintain, or operate or restore said facilities.

3633

(d) that said removal shall be accomplished and effected by Manhattan Railway Company, the necessary and reasonable cost thereof to be paid by the City.

and the Commission having, by order herein dated November 20, 1923, directed that a hearing on said application be held on November 28, 1923, said order designating and certifying George L. Lucas, Acting Chief Executive Officer, to conduct said hearing, take the testimony and report same to the Commission, together with his opinion thereon for its decision and determination; and the said hearing having been duly held on November 28, December 3 and 4, 1923, and Counsel to the petitioner

3634 at said hearing having orally amended its petition to make application for a certificate of convenience and necessity under Section 53 of the Public Service Commission Law for the right to exercise the company's franchise and to erect, maintain and operate such structure shown on its plan, Drawing No. 22941 as are outside of the area of condemnation referred to in Chapter 635 of the Laws of 1923; and the said Acting Chief Executive Officer having made his report and opinion dated December 6, 1923, wherein he finds and recommends that the Commission issue a certificate of convenience and necessity pursuant to Section 53 of the Public Service Commission Law; that the petitioner construct, maintain and operate a stairway at the northeast corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure, substantially as shown on said Drawing No. 22941.

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And the Commission having on the 6th day of December, 1923, adopted an order and determination herein, a copy of which is annexed hereto and made part hereof ordering and determining, among other things,

3636

(1) That the Commission issue a certificate of convenience and necessity pursuant to Section 53 of the Public Service Commission Law; that the petitioner construct, maintain and operate a stairway at the northeast corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure substantially as shown on said Drawing No. 22941.

Now, Therefore, the Transit Commission

Does Hereby Certify that pursuant to Section 53 of the Public Service Commission Law that it is

necessary or convenient for the public service that Manhattan Railway Company construct, maintain and operate a stairway at the northeast corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure substantially as shown on said Drawing No. 22941.

December 6, 1923.
George McAneny, Chairman.
Attest: Frank N. Robinson, Acting Secretary.

State of New York, County of New York, ss.:

3638

I, Frank N. Robinson, Acting Secretary of Transit Commission, do hereby certify that I have compared the attached with the original adopted by the Transit Commission on December 6, 1923, and on file in the office of said Commission, and that it is a correct transcript thereof and of the whole of the original.

In testimony whereof, I have hereunto subscribed my hand and affixed the seal of the Transit Commission, this 7th day of December, 1923.

(Signed) Frank N. Robinson, Acting Secretary.
(Seal.)

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City's Exhibit 49—Dates When Turnstiles on All Lines Crossing 42nd St. Were Placed in Operation.

Dates when turnstiles on all lines crossing 42nd Street were placed in operation.

Lexington Avenue Subway—Grand Central Station

Park Avenue and 42nd Street So. Mez.	1/6/22
" " " " " No. "	1/10/22
Hotel Commodore Mezzanine	1/11/22
City Bank Shuttle "	1/21/22
Hotel Belmont "	12/24/21
City Bank Mezzanine	12/27/21
Madison Avenue Mezz.	12/27/21

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7th Avenue Subway—Times Square Station

Subway Central Mezz.	1/16/22
40th Street "	12/14/21
Liggetts Mezz.	12/14/21
Knickerbocker Mezz.	12/14/21
Shuttle Mezz.	12/20/21
42nd Street & 7th Avenue Mezz.	12/20/21
41st Street N. B. Mezz.	12/20/21
41st Street S. B. Mezz.	12/20/21

3642

3rd Avenue Elevated—

North Bound 4/4/23
South Bound 5/25/23

2nd Avenue Elevated—

4-22-23

6th Avenue Elevated—

North Bound 5/24/23
South Bound 6/9/23

9th Avenue Elevated

North Bound 4/19/23
South Bound 4/17/23

City's Exhibit 50—Ticket Sales, 42nd St. on 3rd Ave. Line, Years 1919 to 1924.

Ticket Sales, 42nd Street on the Third Avenue Line, Manhattan Railway Division, operated by the Interborough Rapid Transit Company.

	1924	1923	1922	1921	1920	1919
			NORTH BOUND.			
July	206,128	169,300	166,100	172,300	152,210	173,060
August	212,873	175,200	169,300	174,200	151,024	176,654
September	216,320	182,800	176,100	180,700	167,918	166,497
October	239,592	193,600	187,900	201,800	173,070	168,634
November	223,026	181,900	173,900	182,500	164,118	168,110
December	262,709	183,200	182,700	188,000	169,020	164,629
January	263,492	182,200	175,600	183,800	162,200	156,377
February	238,500	161,200	162,700	165,200	168,000	135,150
March	268,750	190,600	180,800	192,780	183,000	157,895
April	263,128	208,013	181,000	185,020	177,200	158,858
May		229,658	182,700	187,100	180,800	161,528
June		223,576	167,800	171,500	172,200	153,349
			SOUTH BOUND.			
July	116,613	108,100	107,200	116,320	90,180	75,280
August	118,843	109,210	108,300	114,100	88,880	93,420
September	123,237	113,990	112,500	120,700	101,620	88,900
October	137,235	126,000	121,900	132,700	110,360	93,100
November	129,040	118,000	113,000	123,600	104,140	90,370
December	168,489	119,800	118,100	126,400	108,400	90,730
January	165,025	115,600	113,200	119,500	106,520	89,540
February	146,311	101,700	99,600	106,900	126,740	80,940
March	112,835	119,500	112,200	122,260	128,760	95,280
April	165,149	120,200	112,300	119,740	119,300	95,520
May		125,888	113,600	116,900	118,720	96,120
June		124,648	103,200	107,900	114,760	90,720

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Explanations:

These figures were taken from the monthly statement of ticket sales filed by the Interborough Rapid Transit Company with the Rapid Transit Commission of the State of New York or its predecessor Commission.

3646 *City's Exhibits.*

City's Exhibit 51—Ticket Sales, 6th Ave. and 42nd St. Elevated, Years 1922 and 1923 and First Four Months of 1924.

TICKET SALES
6TH AVENUE AND 42ND STREET ELEVATED.

NORTH

	1922	1923	1924
January	308,600	322,400	362,709
February	277,400	281,300	335,852
March	316,900	329,400	360,722
April	315,100	327,520	358,416
May	314,000	344,745	
3647 June	288,200	318,880	
July	269,000	296,454	
August	269,700	300,665	
September	300,800	325,010	
October	338,400	368,038	
November	319,200	351,041	
December	322,300	363,030	
Total	3,639,600	3,928,756	

SOUTH

	1922	1923	1924
January	186,900	200,780	225,171
February	165,500	172,060	204,923
March	193,640	208,700	221,587
April	189,560	212,400	226,515
May	183,440	204,400	
3648 June	176,260	200,457	
July	165,040	184,298	
August	170,440	188,767	
September	189,060	200,927	
October	213,960	231,513	
November	201,740	217,588	
December	209,500	239,414	
Total	2,245,040	2,461,304	

3649

City's Exhibit 52—Ticket Sales, 23rd St. 3rd Ave. Line, Years 1922 and 1923 and First Four Months of 1924.

Ticket Sales—23rd St. Third Ave. Line, Manhattan Railway Division, operated by the Interborough Rapid Transit Company.

NORTH BOUND.

	1922	1923	1924
January	299,400	316,100	404,965
February	281,500	274,500	376,402
March	330,200	341,300	423,531
April	304,400	380,980	400,740
May	316,800	432,507	
June	298,500	398,375	
July	271,340	368,220	
August	293,260	395,977	
September	293,700	373,832	
October	313,100	450,280	
November	295,700	395,058	
December	298,700	390,644	

3650

SOUTH BOUND.

	1922	1923	1924
January	126,680	133,240	139,995
February	123,151	119,670	129,897
March	144,880	145,935	145,596
April	130,340	138,608	142,086
May	129,700	139,338	
June	118,730	127,822	
July	109,940	120,166	
August	117,900	124,438	
September	123,177	121,790	
October	135,940	152,431	
November	131,080	137,737	
December	131,860	138,902	

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City's Exhibit 53—Ticket Sales, 2nd Ave. and 42nd St. Elevated, Years 1922 and 1923 and First Four Months of 1924.

2ND AVENUE AND 42ND STREET ELEVATED.
TICKET SALES.

	1922	1923	1924
January	165,800	175,940	210,210
February	152,900	156,600	192,815
March	175,560	184,900	215,420
April	168,720	190,057	211,676
May	176,100	211,607	
June	165,160	201,560	
July	163,300	193,688	
3653 August	166,800	192,744	
September	167,120	185,056	
October	179,360	214,468	
November	174,260	203,876	
December	176,120	210,780	
Total	2,030,900	2,321,276	

This station is an island station including North and South passengers.

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3655

City's Exhibit 54—Ticket Sales, 34th St., 3rd Ave. Line, Years 1922 and 1923 and First Four Months of 1924.

Ticket Sales, 34th Street, Third Avenue Line, Manhattan Railway Division, operated by the Interborough Rapid Transit Company.

NORTH BOUND.

	1922	1923	1924
January	191,000	195,580	223,589
February	177,100	175,360	206,214
March	203,800	215,200	226,445
April	194,400	221,973	223,755
May	194,100	235,427	
June	180,300	219,513	
July	165,300	196,097	
August	177,600	206,768	
September	185,500	205,490	
October	199,800	247,526	
November	192,000	225,108	
December	199,060	237,253	

3656

SOUTH BOUND.

	1922	1923	1924
January	101,080	106,300	110,613
February	94,200	94,600	102,222
March	109,880	114,820	113,859
April	101,520	111,044	115,758
May	101,720	109,257	
June	92,780	98,228	
July	85,700	89,044	
August	90,600	92,152	
September	97,420	95,118	
October	108,080	117,833	
November	106,900	111,107	
December	106,100	114,772	

3657

3658 *City's Exhibits.*

City's Exhibit 55—Subway Ticket Sales, Grand Central at 42nd St., Years 1922 and 1923 and First Four Months of 1924.

GRAND CENTRAL AT 42ND STREET SUBWAY
TICKET SALES

	1922	1923	1924
January	2,786,690	3,118,466	3,312,926
February	2,459,089	2,730,118	3,050,905
March	2,851,949	3,124,863	3,292,621
April	2,663,020	2,917,822	3,231,608
May	2,654,980	2,876,616	
June	2,500,311	2,751,457	
3659 July	2,251,307	2,468,687	
August	2,325,675	2,452,059	
September	2,482,080	2,594,192	
October	2,778,895	3,138,138	
November	2,770,047	3,040,027	
December	3,009,853	3,229,488	
	31,533,896	34,436,933	12,886,060

City's Exhibit 56—Subway Ticket Sales, Times Sq. at 42nd St., Years 1922 and 1923 and First Four Months of 1924.

TIMES SQUARE AT 42ND STREET SUBWAY
3660 TICKET SALES

	1922	1923	1924
January	3,118,794	3,395,865	3,604,517
February	2,811,265	3,060,563	3,421,025
March	3,119,599	3,392,249	3,620,672
April	2,912,200	3,127,282	3,379,379
May	2,771,374	2,989,118	
June	2,409,220	2,507,776	
July	2,231,913	2,408,876	
August	2,338,530	2,461,508	
September	2,484,977	2,668,939	
October	2,898,660	3,218,498	
November	3,042,705	3,274,587	
December	3,218,425	3,413,388	
Grand Total	33,357,662	35,878,049	14,025,593

3661

City's Exhibit 57—Monthly Ticket Sales at Grand Central Station of Elevated Division Operated by Interborough Rapid Transit Co. for Fiscal Years (1920 to 1923 and part of 1924) Ended June 30th.

Monthly ticket sales at the Grand Central Station of the Elevated Division operated by the Interborough Rapid Transit Company for the fiscal years ended June 30th:

	1920	1921	1922	1923	1924
July	128,760	106,720	106,720	108,100	121,417
August	128,300	112,320	112,320	112,040	124,055
September	129,200	112,360	112,360	112,760	123,433
October	133,920	110,900	110,900	111,740	135,594
November	121,620	100,720	100,720	102,160	123,442
December	127,780	110,040	110,040	108,340	25,243
January	117,720	119,900	103,960	110,360	
February	124,800	107,900	93,620	97,200	
March	136,240	126,460	110,920	117,920	
April	133,480	121,420	108,440	124,003	
May	129,240	115,320	111,220	127,803	
June	126,220	110,280	108,880	125,957	
Total	1,525,427	1,470,860	1,290,100	1,358,383	.....

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City's Exhibit 58—Chart Showing Monthly Ticket Sales or Turnstile Entries at Grand Central Station of Elevated Division of I. R. T. Co., Registered July 1919 to Demolition.

(This Chart is printed at page 1894 of the record.)

3664 *City's Exhibits.*

City's Exhibit 59—Certificate of Transit Commission Pursuant to Chap. 635, Laws of 1923 (Case No. 2704).

State of New York—Transit Commission.

In the Matter of the Application of the Manhattan Railway Company for a determination, pursuant to Chapter 635 of the Laws of 1923, of railway facilities and structures necessary for the public convenience in the vicinity of its elevated railway station at Third Avenue and 42nd Street.

3665

(Case No. 2704. Certificate pursuant to Chapter 635 of the Laws of 1923.)

The Public Service Commission for the First District having by certificate dated April 22, 1921 in Case No. 2582 certified pursuant to Chapter 788 of the Laws of 1917, as amended by Chapter 611 of the Laws of 1919, that the tracks, structures, station and appurtenances of the Manhattan Railway Company in East 42nd Street, in the Borough of Manhattan, City of New York, are no longer
3666 necessary and convenient for the public service and constitute an impediment and obstruction to the public use of said street; and Chapter 635 of the Laws of 1923 having prescribed the area within which the said tracks, structure, station and appurtenances should be condemned by The City of New York pursuant to said certificate of the Public Service Commission, and having further provided that nothing in said act contained should be deemed to extinguish or impair any existing franchise right of the Manhattan Railway Company to construct and maintain a circuit breaker and such facilities, including stairways in connection with and immediately adjacent to its Third Avenue Station at 42nd Street and the Transit

3667

Commission should determine to be necessary for the public convenience and necessity; and the said Manhattan Railway Company having, by petition dated November 9, 1923, made application to the Commission for a determination that public convenience and necessity requires:

(a) the construction, reconstruction, maintenance and operation of certain structures and facilities designated on I. R. T. Drawing No. 22941.

(b) that the portion of the elevated railroad structures, tracks, stations, platforms, stairways and appurtenances now existing within the condemnation area and obstructing said street are only such as are not indicated on said drawing No. 22941.

3668

(c) that the said certificate dated April 22, 1921 is without prejudice to any franchise of said company to construct, maintain or operate or restore said facilities.

(d) that said removal shall be accomplished and effected by Manhattan Railway Company, the necessary and reasonable cost thereof to be paid by the City.

3669

and the Commission having, by order herein dated November 20, 1923, directed that a hearing on said application be held on November 28, 1925, said order designating and certifying George L. Lucas, Acting Chief Executive Officer, to conduct said hearing, take the testimony and report same to the Commission, together with his opinion thereon for its decision and determination; and the said hearing having been duly held on November 23, December 3 and 4, 1923 and Counsel to the petitioner at said hearing having orally amended its

3670 petition to make application for a certificate of convenience and necessity under Section 53 of the Public Service Commission Law for the right to exercise the company's franchise and to erect, maintain and operate such structures shown on its plan, Drawing No. 22941 as are outside of the area of condemnation referred to in Chapter 635 of the Laws of 1923; and the said Acting Chief Executive Officer having made his report and opinion dated December 6, 1925, wherein he finds and recommends:

3671 (1) That the Commission issue a certificate of convenience and necessity pursuant to Chapter 635 of the Laws of 1923; that the petitioner maintain, construct or reconstruct and operate

(a) two columns supporting the 42nd Street Station of the Third Avenue Elevated Line, which columns are now within the roadway of 42nd Street west of Third Avenue, and a plate girder in place of the present lattice type construction extending from the northerly curb to the southerly curb of 42nd Street.

3672 (b) a stairway at the southwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(c) a stairway in the northwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(d) the waiting room, house for trackmen, porter's closet, women's toilet, circuit breaker house and cable splicing platform now upon the structure of the said elevated railroad.

(e) a duct line under and along 42nd Street

3673

from Shaft No. 1 of the Queensboro Subway Rapid Transit Railroad to a pipe connection on the column supporting the elevated railroad at 42nd Street and Third Avenue, sufficient to accommodate all cables now carried on the spur,

all substantially as shown on said Drawing No. 22941.

and the commission having, on December 6, 1923, adopted an order and determination herein, a copy of which is annexed hereto and made part hereof, ordering and determining, among other things,

3674

(1) That the Commission issue a certificate of convenience and necessity pursuant to Chapter 635 of the Laws of 1923; that the petitioner maintain, construct or reconstruct and operate

(a) Two columns supporting the 42nd Street Section of the Third Avenue Elevated Line, which columns are now within the roadway of 42nd Street west of Third Avenue, and a plate girder in place of the present lattice type construction extending from the northerly curb to the southerly curb of 42nd Street.

3675

(b) a stairway at the southwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(c) a stairway at the northwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(d) the waiting room, house for trackmen, porter's closet, women's toilet, circuit breaker house and cable splicing platform now upon the structure of the said elevated railroad.

3676 (e) a duct line under and along 42nd Street from Shaft No. 1 of the Queensboro Subway Rapid Transit Railroad to a pipe connection on a column supporting the elevated railroad at 42nd Street and Third Avenue, sufficient to accommodate all cables now carried on the spur.

all substantially as shown on said Drawing No. 22,941.

Now, therefore, the Transit Commission does hereby certify pursuant to Chapter 635 of the Laws
3677 of 1923, that public convenience and necessity require the Manhattan Railway Company to maintain, construct or reconstruct and operate within the condemnation area prescribed in said Chapter 635 of the Laws of 1923.

(a) two columns supporting the 42nd Street Station of the Third Avenue Elevated Line, which columns are now within the roadway of 42nd Street West of Third Avenue, and a plate girder in place of the present lattice type construction extending from the northerly curb to the southerly curb of 42nd Street.

3678 (b) a stairway at the southwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(c) a stairway at the northwesterly corner of 42nd Street and Third Avenue leading from the street to said elevated railroad structure.

(d) the waiting room, house for trackmen, porter's closet, women's toilet, circuit breaker house and cable splicing platform now upon the structure of the said elevated railroad.

(e) a duct under and along 42nd Street from

3679

Shaft No. 1 of the Queensboro Subway Rapid Transit Railroad to a pipe connection on a column supporting the elevated railroad at 42nd Street and Third Avenue, sufficient to accommodate all cables now carried on the spur.

all substantially as shown on said Drawing No. 22941.

Dated, December 6, 1923.
George McAneny, Chairman.
Attest: Frank N. Robinson, Acting Secretary.

3680

State of New York, County of New York, ss.:

I, James B. Walker, Secretary of Transit Commission, do hereby certify, that I have compared the attached with the original adopted by the Transit Commission on December 6, 1923, and on file in the office of said Commission, and that it is a correct transcript thereof and of the whole of the original.

In Testimony Whereof, I have hereunto subscribed by hand and affixed the seal of the Transit Commission this 15th day of February, 1924.

3681

James B. Walker, Secretary. (Seal)

3682 *City's Exhibits.*

City's Exhibit 60—Value of 42nd Street Elevated Spur as a Railroad in Operation as a Part of Entire Manhattan Elevated System—Statement Showing Schedule of Operation, Estimated Earnings and Expenses by J. C. Brackenridge.

ESTIMATED EARNINGS & EXPENSES
42ND ST. ELEVATED SPUR
YEAR ENDING JUNE 30TH, 1923

Transportation Revenue

3683 On Nov. 21, 1923 a count was made by the Transit Commission of passengers entering and leaving the Park Avenue Station, showing a total of 12,137, made up of 4647 Eastbound and 7490 Westbound. On the same day destination cards were given out by the Transit Commission, of which 4828 were returned properly filled out. These 4828 traveled a total of 25,061 miles on the Third Avenue Line, or 5.19 miles per passenger. To this 5.19 miles we add the .166 miles on the Spur and obtain an average length of ride of 5.356 miles—the ride on the Spur being 3.09% of the total ride.

12,137 passgrs. x 5c. = $606.85 x 3.09% = $18.75 per day		
$18.75 rev. per day x 300 days		$5625.
$18.75 x 41% (84 car mi. on Sunday) / (207 " " " week ds.) = $7.70		
$7.70 per day x 65 (Sundays and Holidays)	500.	$6,125.
Other Street Railway Operating Revenue		
The Total Passenger Revenue for the entire system was $17,424,198.55, and in addition there was Other Street Railway Operating Revenue of $1,771,213.89, or 10.1% more—say 10%		$ 613.
3684 Total Street Railway Operating Revenue		$6,738.
Expenses		
Maintenance of Way & Structures, 70,170 car miles per year @ 1.87c. per car mile	$ 1,312.18	
Maintenance of Equipment, 70170 car mi. @ 2.28c.	1,599.88	
Operation of Power Plant, 70170 " " @ 3.02c.	2,119.13	
Operation of Cars, 300 ds. @ $80.40 = $24,120. 65 ds. @ $51.08 = 3,320.20	27,440.20	
Injuries & Damages, 70170 car mi. @ 0.4c.	280.68	
General, Miscellaneous, 70170 car mi. @ 1.01c.	708.72	
	$33,460.79	
Taxes—70,170 car miles @ 3.42c.	2,399.81	
Total Operating Expenses and Taxes		$35,861.
Expenses Exceed Revenue by		$29,123.

The Spur further fails to earn interest on the investment and the cost of the Easements.

WAGES
OPERATION OF CARS

Letter dated January 7, 1924 from Mr. J. L. Quackenbush, Genl. Counsel of the Interborough Rapid Transit Company to Mr. L. H. LaMotte, Assistant Corporation Counsel of the City of New York, says:—

"1. The direct labor cost of operating spur

4 Motormen @ $6.56 per day	$26.24		
4 Conductors @ 4.71 " "	18.84		
3 Guards @ 4.37 " "	13.11		
Total		$58.19	
2 hand switchmen @ $4.79 per day..	$ 9.58	9.58	
2 Agents @ $4.70 per day	$ 9.40		
1 Porter @ 3.47 " "	3.23	12.63	
Total		$80.40"	3686
$80.40 per day x 300 days			$24,120.00

"The cost of labor to operate the 42nd Street Spur on Sundays.

2 days–3 hours	Motormen	@	$6.56	per day	$15.58
3 days	Conductors	@	4.71	" "	14.13
2 days	Guards	@	4.37	" "	8.74
2 days	Agent	@	4.70	" "	9.40
9 hours	Porter	@	3.58	" "	3.23
Total					$51.08"
$51.08 per day x 65 Sundays and Holidays					$ 3,320.20
Total Wages Per Year					$27,440.20

CAR MILEAGE ON THE 42ND ST. ELEVATED SPUR 3687

Train No. 1
153 1-car round trips—153 trips
108 2-car round trips—216 "
} 643 trips at .322 car miles — 207 car miles per day

Train No. 2
66 1-car round trips— 66 trips
104 2-car round trips—208 "
} Monday to Friday inclusive

Train No. 1
125 1-car round trips—125 trips
136 2-car round trips—272 "
Train No. 2
36 1-car round trips— 36 trips
134 2-car round trips—268 "
} 701 round trips at .322 car miles—226 car miles on Saturday

Train No. 1
261 round trips at .322 car miles—84 car miles on Sunday

3688

SUMMARY

207 car miles per day x 5 days (Mon. to Fri.)—1035 car miles
226 " " " " x 1 " (Saturday) — 226 " "
84 " " " " x 1 " (Sunday) — 84 " "

1345 car miles

1345 car miles per week x 52 weeks—69.940 car miles per year

Use Int. Rapid Transit Company's.... 70.170 car miles per year
as reported in letter of Jan. 7, 1924 from J. L. Quackenbush to L. H. LaMotte.

3689

City's Exhibit 61-A—Detailed Estimated Cost of Changes Required at 42nd St. and 3rd Ave. by Removal of Spur Made by J. C. Brackenridge.

SUMMARY OF ESTIMATED COST OF ELEVATED STATION WORK, CABLES, AND DUCT LINE AT FORTY-SECOND STREET AND THIRD AVENUE

	Estimated cost of Changes in Accordance with Interborough Rapid Transit Drawing No. 22941		Estimated Cost of Station Changes due to removal of the 42nd St. El. Spur, by J. C. Brackenridge
	by Coverdale & Colpitts for the IRT Co.	by J. C. Brackenridge for City of N. Y.	
Station Work	$51,486.	$44,344.	$27,769.
Duct Line	8,950.	7,105.	2,739.
3690 Cables	4,642.	5,291.	3,281.
	$65,078.	$56,740.	$33,789.

ELEVATED STATION WORK—FORTY-SECOND STREET & THIRD AVENUE

	Estimated Cost of Changes in accordance with Interborough Rapid Transit Co. Drawing No. 22941 — by Coverdale & Colpitts for Int. R. T. Co.			by J. C. Brackenridge for City of N. Y.			Estimated Cost of Station Changes due to removal of 42nd St. El. Spur — by J. C. Brackenridge
umn foundations	2 @ $600.		$ 1,200.	2 @ $600.		$ 1,200.	$ 1,200.
ch basins	2 @ $500.		1,000.	2 @ $300.		600.	600.
	2 @ 3400 lbs. =	6800 lbs.		2 @ 3200 lbs. =	6400#		
bases				2 @ 2800 lbs. =	5600#		
bases and fenders		12000 lbs.					
der		20000 lbs.			20000#		
aming	(19.4 T. @ $200)	38800 lbs.	3,880.	(@ 10c. a lb.)	32000#	3,200.	3,200.
w 10%		27100 lbs.	2,710.	(@ 8c. " ")	27100#	2,168.	2,168.
		6590 lbs.	659.				
	Say	72000 lbs.	7,200.		59100#	5,368.	5,368.
tion Building			10,920.			10,920.	4,000.
opy	1235 sq. ft. @ $ 2.00		2,470.				
tform	1235 " " @ $ .66		815.				
cuit breaker house	95 sq. ft. @ $13.00		1,235.	982 cu. ft. @ 60c.		590.	590.
ckmen's house	170 " " @ $13.00		2,210.	1700 cu. ft. @ 60c.		1,020.	1,020.
le splicing platform						500.	500.
irways	158 risers @ $104.		16,432.				
dings	70 lin. ft. @ $ 96.		6,720.				
rway, with landings & canopies				44 treads		3,780.	
" " " " "				44 "		3,780.	3,780.
" to express level. " " "				27 "		2,954.	2,954.
" with landings & canopies				44 "		6,921.	
landing over 42nd Street						1,257.	1,257.
on to present undergrade bridge			880.			851.	851.
g pres. sta. bldg. & canopy	22,500 c. f. @ 5c.		1,125.			500.	500.
NW stairway from present un-ade bridge to platform removed						330.	330.
g NW stairway from street to l landing						300.	300.
g pres. steel work—2 cols., 1 girder, 2 track stringers	16 T. @ $40.		640.				
g old platform	1120 sq. ft. @ 10c.		112.				
present structure, 52 tons steel ved & added			2,000.			1,500.	1,500.
ry work while station is being structed			2,500.			2,500.	
& removing temp. connections							2,500.
			$57,459.			$44,871.	$27,250.
s & contingencies, 5%			2,873.				
			$60,332.				
ring, Superintendence, Legal, and . 5%			3,018.				
r Engineering, Superintendence, inistration, Legal, etc.						4,487.	2,725.
Forward			$63,350.			$49,358.	29,975.

ELEVATED STATION WORK—FORTY-SECOND STREET & THIRD AVENUE

	Estimated Cost of Changes in accordance with Interborough Rapid Transit Co. Drawing No. 22941				Estimated Cost of Station Changes due to removal of 42nd St. El. Spur	
	by Coverdale & Colpitts for Int. R. T. Co.		by J. C. Brackenridge for City of New York		by J. C. Brackenridge	
forward		$63,350.		$49,358.		$29,975.
rm, present value.....	$ 623.		$ 705.90			
ies, " "	2646.		1009.98			
ipe railing, " "	56.		90.			
shields " "	1359.		746.65			
men's house, " "	1802.		712.80		$ 712.80	
t breaker house, " "	546.		324.		324.	
	$7032.		$3589.33			
n steel for above, " "	2384.		969.		969.	
	$9416.		$4558.33		$2005.80	
ions & contingencies, 5%	471.		10% for Engng, Suptnce, Admin, etc.	455.83		
rtion of overhead expenses, 20%	1977.				200.58	
	$11864.	$11,864.	$5014.16	$ 5,014.	$2206.38	$ 2,206.
Total Additional Cost		$51,486.		$44,344.		$27,769.

DUCT LINE—FORTY-SECOND STREET & THIRD AVENUE

	Estimated Cost of Changes in accordance with Interborough Rapid Transit Co. Drawing No. 22941			Estimated Cost of Station Changes due to removal of 42nd St. El. Spur	
	by Coverdale & Colpitts for Int. R. T. Co.		by J. C. Brackenridge for City of New York	by J. C. Brackenridge	
			Ducts—3530 lin. ft. @ $1. $3,530.	8 ducts—1252' @ $1.	$1,252.
has 5 manholes, 3530 lin.			Manholes—5 @ $500. 2,500.	2 manholes @ $500.	1,000.
rified duct, 390 lin. ft. of			3½" W. I. Pipe Conduit—390 lin. ft. @ $1.10 429.	3½" W. I. pipe, 216' @ $1.10	238.
temporary sidewalks, and					
sub-surface structures...		$ 9,801.			$2,490.
Contingencies, 5%		490.	10% for Eng, Sup, Legal, &c. 646.	10% Eng, Sup, Legal, &c,	249.
		$10,291.			
, Legal, etc., 5%		519.			
		$10,810.	$7,105.		$2,739.
present duct line	$1,476.				
ions & Contingencies	74.				
of overhead, 20%	310.	1,860.	.....		.....
Total Additional Cost ...		$8,950.	$7,105.		$2,739.

3699 3698 3697

CABLES—FORTY-SECOND STREET & THIRD AVENUE

	8702		8701		3700	
	Estimated Cost of Changes in accordance with Interborough Rapid Transit Co. Drawing No. 22941				Estimated Cost of Station Changes due to removal of 42nd St. El. Spur	
	by Coverdale & Colpitts for Int. R. T. Co.		by J. C. Brackenridge for City of New York		by J. C. Brackenridge	
0 c.m. Positive	600 lin. ft. @ $4.50	$2,700.	1200 ft. cable @ $4.50	$5,400.	4—2,000,000 c.m. cables, 794 ft. @ $4.50	$3,573.
0 c.m. Negative	600 lin. ft. @ $4.00	2,400.				
ver cables, moving circuit s, & rearrangement of cables cture		3,500.				
		$8,600.				
ions & Contingencies		430.	10% Int., Eng., Admin., etc.	540.	10% Eng., etc.	357.
		$9,030.				
Suptnce, Admin., Legal		450.				
		$9,480.		$5,940.		$3,930.
value of existing rubber red cables included in esti- of structure	$3,840.		Pres. val. of cables	$590.	Pres. Val. of cables 4097# @ 18c. = $738 — 20% = ...	$590.
ns & contingencies, 5%	192.		10% Engng, etc. ..	59.	10% Engng, etc. ...	59.
ion of overhead expenses, ...	806.	$4,838.		$ 649.		$ 649.
Total Additional Cost		$4,642.		$5,291.		$3,281.

City's Exhibit 62 (City's Ex. 62 for Ident.)—Compilation of Monthly Ticket Sales of 3rd Ave. Elevated at Grand Central and 42nd St. and 3rd Ave., Years 1922 and 1923 and Part of 1924.

I. R. T. ELEVATED DIVISION—TICKET SALES

	Grand Central	42nd St. Sta. North	3d Av. El. South	Total
1922				
January	103,960	175,600	113,200	392,760
February	93,620	162,700	99,600	355,920
March	110,920	180,800	112,200	403,920
April	108,440	181,000	112,300	401,740
May	111,220	182,700	113,600	407,520
June	108,880	167,800	103,200	379,880
6 mos. Jan.-June	637,040	1,050,600	654,100	2,341,740
Yr. end. June 30/22	1,290,100	2,106,600	1,335,100	4,731,800
July	108,100	169,300	108,100	385,500
August	112,040	175,200	109,210	396,450
September	112,760	182,800	113,990	409,550
October	111,740	193,600	126,000	431,340
November	102,160	181,900	118,000	402,060
December	108,340	183,200	119,800	411,340
6 mos. July-Dec.	655,140	1,086,000	695,100	2,436,240
Yr. end. Dec. 31/22	1,292,180	2,136,600	1,349,200	4,777,980
1923				
January	110,360	182,200	115,600	408,160
February	97,200	161,200	101,700	360,100
March	117,920	190,600	119,500	428,020
April	124,003	208,013	120,200	452,216
May	127,803	229,658	125,888	483,349
June	125,957	223,576	124,648	474,181
6 mos. Jan.-June	703,243	1,195,247	707,536	2,606,026
Yr. end. June 30/23	1,358,383	2,281,247	1,402,636	5,042,266
July	121,417	206,128	116,613	444,158
August	124,055	212,873	118,843	455,771
September	123,433	216,320	123,237	462,990
October	135,594	239,592	137,235	512,421
November	123,442	223,026	129,040	475,508
December	25,243	262,709	168,489	456,441
6 mos. July-Dec.	653,184	1,360,648	793,457	2,807,289
Yr. end. Dec. 31/23	1,356,427	2,555,895	1,500,993	5,413,315
1924				
January	.....	263,492	165,025	428,517
February	.....	238,500	146,311	384,811
March	.....	268,750	162,835	431,585
April	.....	.....	.....	.....

3704

3705

42nd St. Sta. of 3d Ave. El. is an Express Station.
First three columns copies from Transit Commission reports. Last column added for comparative purposes.

3706

City's Exhibit 63 (City's Ex. 63 for Ident.)—Comparison of I. R. T. Elevated Ticket Sales, 3rd Ave. Line at 42nd St. and at 34th St. for 1923 and 1924.

I. R. T. ELEVATED TICKET SALES THIRD AVENUE LINE AT

	42nd Street		34th Street	
	1923	1924	1923	1924
January	408,160	428,517	301,880	334,202
February	360,100	384,811	269,960	308,436
March	428,020	431,585	329,020	340,304
April	452,216	428,277	333,017	339,513
3707 May	483,349	444,113	334,684	334,936
June	474,181	432,437	317,741	311,594
July	444,158	425,331	304,062	287,864
August	455,771	414,960	298,920	284,095
September	462,990	429,271	300,608	313,030
October	512,421	468,848	365,359	349,216

NOTE:

These figures were taken from the monthly traffic reports made by the Interborough Rapid Transit Company to the Transit Commission. They include both northbound and southbound traffic, getting on at those stations, but not getting off at those stations. The figures for January, February and March, 1923, are ticket sales; the others are turnstile readings. The total includes the figures which would involve comparison seven turnstile readings with ticket sales. At 42nd Street for 1923 the figures include the sales or turnstile readings at Grand Central Station, which was discontinued on December 7, 1923.

3708

City's Exhibit 64 (City's Exhibit 64 for Identification)—Tabulation Ticket Sales, 3rd Ave. Line at 42nd St., Grand Central and 34th St., from Jan., 1919 to Aug., 1925.

INTERBOROUGH RAPID TRANSIT COMPANY—ELEVATED DIVISION

Ticket Sales or Turnstile Entries 42nd Street (incl. Grand Central) and 34th Street Stations, Third Avenue Line

	42nd Street Stations		34th Street Station		Percentage Change over same period previous year: 42nd St. Stations	34th St. Station
Calendar Year						
1919	4,557,129		3,370,648			
1920	5,128,800		3,688,471		+ 12.6	+ 9.4
1921	4,869,940		3,556,800		— 5.0	— 3.6
1922	4,777,980		3,455,940		— 1.9	— 2.8
1923	5,413,315		3,843,491		+ 13.3	+ 11.2
1924	5,140,581		3,847,845		— 5.0	+ 0.1
1925 (7 mos.)	3,141,490		2,208,978		+ 5.6	— 2.1
	1923	1924	1923	1924		
Jan.	408,160	428,517	301,880	334,202	+ 5.0	+ 10.7
Feb.	360,100	384,811	269,960	308,436	+ 6.9	+ 14.3
March	428,020	431,585	329,020	340,304	+ 0.8	+ 3.4
Total 1st Quarter	1,196,280	1,244,913	900,860	982,942	+ 4.1	+ 9.1
April	452,216	428,277	333,017	339,513	— 5.3	+ 1.9
May	483,349	444,113	334,684	334,936	— 8.1	+ 0.0
June	474,181	432,437	317,741	311,594	— 9.0	— 1.9
Total 2nd Quarter	1,409,746	1,304,827	985,442	986,043	— 7.0	+ 0.0
July	444,158	425,331	304,062	287,864	— 4.2	— 5.3
Aug.	455,771	414,960	298,920	284,095	— 9.0	— 5.0
Sept.	462,990	429,271	300,608	313,030	— 7.3	+ 4.1
Total 3rd Quarter	1,362,919	1,269,562	903,590	884,989	— 6.9	— 2.1
Oct.	512,421	468,848	365,359	349,216	— 8.5	— 4.4
Nov.	475,508	417,549	336,215	309,913	— 12.2	— 7.8
Dec.	456,441	434,882	352,025	334,742	— 4.7	— 4.9
Total 4th Quarter	1,444,370	1,321,279	1,053,599	993,871	— 8.5	— 5.7
Total for Year	5,413,315	5,140,581	3,843,491	3,847,845	— 5.0	+ 0.1
	1924	1925	1924	1925		
Jan.	428,517	431,692	334,202	326,105	+ 0.7	— 2.4
Feb.	384,811	398,165	308,436	302,253	+ 3.5	— 2.0
March	431,585	464,513	340,304	340,721	+ 7.6	+ 0.1
Total 1st Quarter	1,244,913	1,294,370	982,942	969,079	+ 3.9	— 1.4
April	428,277	468,995	339,513	334,381	+ 9.5	— 1.5
May	444,113	474,748	334,936	319,372	+ 6.9	— 4.6
June	432,437	457,179	311,594	305,268	+ 5.7	— 2.0
Total 2nd Quarter	1,304,827	1,400,922	986,043	959,021	+ 7.4	— 2.7
July	425,331	446,198	287,864	280,878	+ 5.0	— 2.5
Total 7 Months	2,975,071	3,141,490	2,256,849	2,208,978	+ 5.6	— 2.1

Source: Ticket sale and turnstile entry readings transcribed from tabulations filed by Company with Transit Commission or its predecessor; percentage change for similar periods, calculated.

Notes: The figures given for 42nd St. include those of the Grand Central up to the time the spur ceased operation, December 1923. Turnstiles were installed April, 1923.

Dates of important changes at 42nd St.:

Dec. 7, 1923, spur closed and removal begun.

May 22, 1924, removal of spur completed.

Aug. 27, 1924, cross-girder over 42nd St. erected.

3712

City's Exhibit 65 (City's Exhibit 65 for Identification)—Comparison of Ticket Sales, 3rd Ave. Line at 42nd and at 34th Sts., for First Seven Months in 1923, 1924 and 1925.

INTERBOROUGH RAPID TRANSIT COMPANY
ELEVATED DIVISION

Ticket Sales or Turnstile Entries 42nd Street (Incl. Grand Central) and 34th Street Stations, Third Avenue Line

3713

Seven months ended July 31	42nd Street Stations	34th Street Station
1923	3,050,184	2,190,364
1924	2,975,071	2,256,849
1925	3,141,490	2,208,978

Increase or (D) Decrease

	Amount		Percentage	
	42nd Street Stations	34th Street Station	42nd Street Stations	34th Street Station
1924 over 1923	D 75,113	66,485	D 2.5	3.0
1925 over 1924	166,419	D 47,871	5.6	D 2.1
1925 over 1923	91,306	18,614	3.0	0.8

Source: Amounts transcribed from tabulations filed by Company with Transit Commission or its predecessor; change for similar periods calculated.

3714

City's Exhibit 66—Photograph.

(This photograph is printed at page 1896 of the record.)

City's Exhibit 67—Photograph.

(This photograph is printed at page 1898 of the record.)

City's Exhibit 68—Photograph.

(This photograph is printed at page 1900 of the record.)